

VORYS, SATER, SEYMOUR AND PEASE

1800 M STREET, N. W.
SUITE 800-SOUTH
WASHINGTON, D. C. 20036

TELEPHONE
202-296-2929
CABLE ADDRESS
VORYSATER

December 29, 1978

9976
RECEIVED NO. Filed 1425
DEC 29 1978 - 1 15 PM
INTERSTATE COMMERCE COMMISSION
520 EAST BROAD STREET
COLUMBUS, OHIO 43215
TELEPHONE
614-464-6400

Secretary
Interstate Commerce Commission
Washington, D. C.

Re: Recordation of Mortgage of
Railroad Ruling Stock

Dear Sir:

The undersigned, being one of the attorneys for the City National Bank and Trust Company of Columbus, Ohio, hereby files an original and two counterparts of a Mortgage of Railroad Rolling Stock and requests that the mortgage be recorded with the Commission pursuant to a 49 U.S.C. section 11303(a).

The names and addresses of parties to the transaction are as follows.

South-East Coal Company
Irving, Kentucky 40336

South-East Coal Company
88 East Broad Street
Columbus, Ohio 43215

The City National Bank and Trust
Company of Columbus
100 East Broad Street
Columbus, Ohio 43215

Included in the property covered by the aforesaid mortgage is railroad rolling stock used or intended for use in connection with interstate commerce which is owned by South-East Coal Company at the time of said mortgage or thereafter acquired by it or its successors.

A check in the amount of \$50 in payment of the recordation fee is enclosed.

Upon recordation, the original mortgage should be returned to Leon McCorkle, Jr., Esq., Vorys, Sater, Seymour and Pease, 52 East Gay Street, Columbus, Ohio 43215.

Very truly yours,

M. Peter McPherson
M. Peter McPherson

MPM/1

Interstate Commerce Commission
Washington, D.C. 20423

12/29/78

OFFICE OF THE SECRETARY

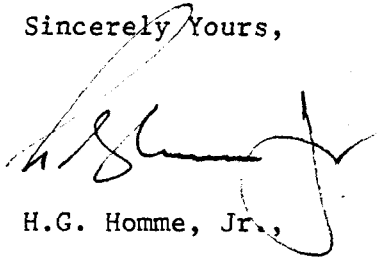
Leon McCorkle, Jr. Esq.
Vorys, Sater, Seymour & Pease
52 East Gay Street
Columbus, Ohio 43215

Dear

Sir:

The enclosed document(s) was recorded pursuant to the
provisions of Section 20(c) of the Interstate Commerce Act,
49 U.S.C. 20(c), on 12/29/78 at 1:15pm ,
and assigned recordation number(s) 9976

Sincerely Yours,



H.G. Homme, Jr.,
Secretary

Enclosure(s)

SE-30-T
(2/78)

VORYS, SATER, SEYMOUR AND PEASE

1800 M STREET, N. W.

SUITE 800-SOUTH

WASHINGTON, D. C. 20036

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52 EAST GAY STREET
COLUMBUS, OHIO 43215
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January 2, 1979

Mrs. Mildred Lee
Interstate Commerce Commission
Room 1227 - Recordations Filing Room
12th and Constitution Ave., N.W.
Washington, D.C. 20423

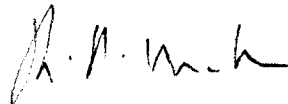
RECORDATION NO. 2276
JAN 5 1979
INTERSTATE COMMERCE COMMISSION
Filed 1425

Dear Mrs. Lee:

Enclosed is Exhibit A to the Southeast Coal Company and City National Bank filing of a mortgage made on December 29, 1978. As you recall, these documents are not the mortgage itself but merely an exhibit. Please attach this exhibit to the filing made at that time.

I believe this was the manner in which you wish to have this done.

Best regards,



M. Peter McPherson

MPM/pg
Enclosure

MORTGAGE OF RAILROAD ROLLING STOCK
(Security Agreement)

9976

RECORDATION NO. Filed 1425

DEC 29 1978 - 1 15 PM

INTERSTATE COMMERCE COMMISSION

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MORTGAGE OF RAILROAD ROLLING STOCK
(Security Agreement)

SOUTH-EAST COAL COMPANY, a corporation organized and existing under the laws of the Commonwealth of Kentucky, located at Irvine (mailing, P.O. Box 332), Kentucky 40336 ("Coal Co."), SOUTH-EAST COAL SALES COMPANY, a corporation organized and existing under the laws of the Commonwealth of Kentucky, located at 88 East Broad Street, Columbus, Ohio 43215 ("Sales Co."), and THE CITY NATIONAL BANK & TRUST COMPANY OF COLUMBUS ("CNB"), a national banking association organized and existing under the laws of the United States, located at and with a mailing address of 100 East Broad Street, Columbus, Ohio 43215 (CNB also being hereinafter sometimes referred to as the "Mortgagee"), in consideration of the mutual covenants and agreements contained herein, hereby Recite and Agree as follows:

Recitals

1. Ownership of Units

Coal Co. ("Mortgagor" hereunder) is the owner of 692 railroad hopper cars specifically identified in Schedule 1 hereto, which number and description may be amended from time to time hereunder by means of the form attached hereto as Schedule 2 (all of which cars and any other railroad rolling stock covered hereby, whenever acquired, together with all replacements, replacement parts, additions, re-

pairs, repair parts, accessions and accessories incorporated therein and/or affixed thereto, and all special tools and devices incorporated thereinto, and all replacements and substitutions thereof are hereinafter referred to collectively in the plural as the "Units" and in the singular as "Unit").

Some of the Units are secured to CNB under and pursuant to the terms of a Mortgage of Railroad Rolling Stock recorded with the Interstate Commerce Commission on January 27, 1976, under Recordation No. 8194, as subsequently amended by schedules thereto (the "Prior Mortgage").

2. Agreement to Finance

The Mortgagee has agreed to make one or more Advancements to Mortgagor and Sales Co. ("Guarantor"), such Advancements, together with other obligations recited herein, to be secured by the Units.

The Loan Agreement attached hereto as Exhibit A and all terms of Sections 2, 5, 6, 7, 8, 9, 10, 12, Schedule 1 and Schedule 2 thereof are hereby incorporated herein and all terms therein shall have the same meanings herein, except only as otherwise defined; provided, however, that whenever the Loan Agreement refers to the Banks or the Agent, it shall be deemed to refer to the Mortgagee hereunder. The provisions so incorporated are hereinafter referred to as the "Loan Agreement."

3. Agreement to Secure Advancements

Mortgagor and Guarantor have agreed to grant and have granted to Mortgagee security interests in certain collateral described in paragraph 5 hereto (all called

collectively, including the Units, the "Collateral") to secure the Obligations, as defined herein, of Mortgagor to the Mortgagee.

4. Mortgagor's Obligations

Mortgagor's obligations hereunder shall include the total unpaid amount of the Advancements, together with any and all existing and future obligations and Indebtedness (1) under the Loan Agreement, Equipment Security Agreement and hereunder, and (2) the Loan Agreement, Mortgage of Railroad Rolling Stock and attendant documents by and between the parties hereto and dated December 28, 1978, and (3) the agreements included in Schedule 1 to the Loan Agreement, (all such agreements and documents referred to in (1), (2) and (3) being hereinafter referred to as the "Attendant Agreements"), all of whatever kind and whenever created of Mortgagor to Mortgagee, including interest, whether or not given pursuant to commitment, direct or indirect, absolute or contingent, now existing or hereafter arising, all of which are covered by this Mortgage and are herein collectively called "the Obligations."

Agreements

5. Mortgage (Security) Interests

To secure payment and performance of the Obligations, Mortgagor grants to Mortgagee a continuing security interest in the following, and, if moved, sold, leased or otherwise disposed of, the proceeds thereof:

Whether now in existence or hereafter acquired, all of the following: The railroad rolling stock specifically identified in Schedule 1 hereto (to be further identified, supplemented and added to from time to time); together with all replacements, replacement parts, additions, repairs, repair parts, accessions and accessories incorporated therein and/or affixed thereto, all special tools and devices incorporated thereinto or used in connection therewith; and together with all products, replacements, additions, substitutions and proceeds (including any claims or insurance payable by reason of loss or damage to the collateral) thereof.

6. Inspection, Selection and Delivery of Units

As to each Unit acquired after or not in service or compliance with Section 8 on the date hereof, Mortgagor will inspect and carefully select such Unit under the terms of any agreement affecting the purchase thereof and will take delivery thereof. By inspecting, selecting and taking delivery of such Unit, Mortgagor shall and does warrant to Mortgagee that each delivered Unit is in the conditions, repair and of a value to be fully suitable for all purposes hereunder. Mortgagor will transport each such Unit of which it first takes delivery to its repair shop at Irvine, Kentucky,

for further inspection and repair as necessary to insure compliance herewith, all at Mortgagor's cost and expense.

7. Repairs, Alterations, Additions, Improvements and Expenses

Mortgagor warrants that it has, will maintain the capability to, and will prior to and during use of each Unit under Section 8 hereof, mark and maintain such marking in compliance with Schedules 1 and 2, repair such Unit as necessary to insure compliance herewith and with all applicable laws, rules and regulations to which reference is made in Section 8 hereof, and obtain and keep in force from the Louisville and Nashville Railroad an appropriate certificate reciting and evidencing such compliance.

During the effectiveness hereof, Mortgagor will make such repairs, alterations, additions and improvements as are or may be required from time to time to insure compliance herewith and with all laws, rules and regulations to which reference is made in Section 8 hereof. Without the prior written consent of Mortgagee, Mortgagor shall make no other alterations, additions or improvements to any Unit, unless such may be made without reduction of the value of that Unit below the amount which it would have been had no such alteration, addition or improvement been made, and without impairment to the condition and working order required hereby.

Mortgagor will keep each Unit in good repair, condition and working order and will furnish all parts, mechanisms and devices required to keep each Unit in good mechanical and working order and in compliance with the laws to which reference is made in Section 8 hereof. Mortgagee shall have no responsibility for any cost arising under this Section or for any expense arising out of or necessary for the operation and use of the Units, including but not limited to maintenance, repairs and replacement parts, storage, tolls, tariffs, fines, registration and insurance fees for all insurance required hereby.

8. Use and Standards of Use and Repair

Mortgagor will repair, keep in repair and use the Units in a careful and proper manner and will comply with and conform to and with all current and future federal, state, municipal, police and other laws, ordinances and regulations relating to the possession, use or maintenance of the Units. Mortgagor will comply and insure compliance with all rules, interpretations, codes and orders governing use, hire, condition, repair and all other matters interpreted as being applicable to the Units during the effectiveness hereof by and of the American Association of Railroads ("AAR") and any other organization, association, agency or governmental authority, including the Interstate Commerce Commission and the Department of Transportation, which may during the effectiveness hereof be responsible for or have

authority promulgate such rules, interpretations, codes and orders. Mortgagor agrees to indemnify and hold Mortgagee safe and harmless from and against any and all claims, costs, expenses (including without limitation attorneys' fees), damages and liabilities claimed, arising from or pertaining to such laws, ordinances, regulations, rules interpretations, codes and orders.

It is understood that Mortgagor will use the Units in shipping its coal to various of its customers and that the Units, for that purpose, will be transported in interstate commerce by and upon property of various railroads and other entities operating in the continental United States only. Mortgagor will use those of the Units which are hopper cars, and will make its best effort to require their use by any such railroads and other entities, only in whole trains or units thereof of not less than 40 Units each and will not permit separate use of those Units or use thereof for any purpose other than the carrying of Mortgagor's coal to its customers or affiliates.

9. Supplemental Schedules and Identification

In the event of any addition or substitution of Collateral hereunder, and in compliance with any applicable requirement of the Loan Agreement, Mortgagor will forthwith prepare and submit to the Agent, with copies to each of the Banks, Supplemental Schedules in the form of Schedule 2 hereto. In addition, Mortgagor will affix to each Unit and

maintain throughout the effectiveness hereof, labels, plates or other markings identifying the Units and Mortgagee's interest therein, including without limitation the marks and stencils recited in the Supplemental Schedules. Mortgagor agrees to join with Mortgagee in the execution of any documents and to pay all recording costs, fees and taxes associated therewith which Mortgagee may request to give evidence of Mortgagee's interest in the Units and Mortgagor agrees that Mortgagee may give notice of such interest to any and all of Mortgagor's creditors.

Notwithstanding the use of the Supplemental Schedules to better identify the Units, it is the intent of the parties hereto that the Mortgagee's interests attach at the earliest time permitted by law.

10. Mortgagor's Additional Obligations

With respect to all of the Collateral (except only to the extent that the provisions of this Section are inconsistent with other sections hereof in respect of the Units), Mortgagor warrants and covenants:

(a) That Mortgagor will keep accurate and complete records of the Collateral, separate and distinct from those of Mortgagor's other property, its disposition and the proceeds thereof and will permit the Mortgagee and its representatives at any time and wherever located to examine and inspect such records and the Collateral; and

(b) That, except for the security interest granted hereby and except for prior first and best security interests granted or assigned to the Mortgagee, Mortgagor is, and as to the Collateral acquired after the date hereof shall be, the owner of the Collateral, free and clear of any prior lien, security interest or encumbrance; that Mortgagor will defend the Collateral against the claims and demands of all persons at any time claiming the same or any interest therein; and that no mortgage, financing statement or agreement is on file in any public office pertaining to the Collateral, except in favor of the Mortgagee; and

(c) That without the prior written consent of the Mortgagee, Mortgagor shall not part with the possession or control of the Collateral or sell, pledge, mortgage, encumber or otherwise transfer or dispose of, or attempt to sell, pledge, mortgage, encumber or otherwise transfer or dispose of any interest in all or any part of the Collateral and that the Mortgagee's security interest in the proceeds of the Collateral, and/or notification of its interest in such proceeds in financing statements or otherwise, shall not be construed as modifying this Mortgage or as the Mortgagee's consent to disposition of the Collateral other than as set forth herein; and

(d) That Mortgagor will keep the Collateral free from all claims, liens and legal process of creditors of Mortgagor, will pay all costs, expenses, fees, taxes and

charges of any kind whatsoever arising by virtue of its ownership, possession or use of the Collateral, however, Mortgagor may in good faith contest the validity of any such charge and Mortgagor shall forthwith notify the Mortgagee of any such contest; and

(e) That at the request of the Mortgagee, Mortgagor will join with the Mortgagee in executing such documents, including financing statements or amendments thereto, as the Mortgagee in its discretion may from time to time deem necessary or desirable in order to comply with applicable law or to preserve and protect the security interests provided for hereby; that Mortgagor will pay all costs and expenses, including recording fees and taxes, of filing all documents and instruments required and requested by the Mortgagee hereunder; that in the event that any of the Collateral is subject to the claim of another security interest, if requested by the Mortgagee at any time prior to the termination hereof, Mortgagor will obtain at its expense and deliver to Mortgagee a statement of account or a list of the Collateral approved or corrected by the person claiming such other security interest; and that, in order to perfect and protect purchase money security interests in the Collateral, the Mortgagee may, and hereby is authorized by Mortgagor to, give such notice to other creditors of Mortgagor as may be necessary under applicable law or deemed desirable by the Mortgagee; and

(f) That Mortgagor will indemnify and save harmless the Mortgagee, its successors and assigns from any charge, claim, proceeding, judgment, loss, expense (including attorneys' fees) or liability which in any manner or from any cause arises in respect or on account of the repair, possession, operation or other use of any of the Collateral and Mortgagor will give the Mortgagee prompt notice of any event contemplated by this Section and known to it to have occurred.

11. Insurance

Mortgagor further warrants and covenants that it will keep and maintain the following insurance on and in respect of the Collateral and of its business generally:

(a) Comprehensive general liability (comprehensive coal mine liability) with coverage limits of \$4 million per occurrence;

(b) Comprehensive general automotive liability with coverage limits of \$4 million per occurrence;

(c) Loss, damage, or destruction coverage on those of the Units which are locomotives, in amounts equal to the replacement value thereof;

that such insurance shall name Mortgagor, and the Mortgagee as insureds thereunder as their respective interests may appear, shall be placed with a company or companies satisfactory to the Mortgagee, shall provide that all losses shall be adjusted with and paid to both Mortgagor and the

Mortgagee and shall be subject to alteration or cancellation only after 30 days' prior written notice to Mortgagor and the Mortgagee; that Mortgagor will deliver to the Mortgagee certificates or memoranda of such insurance within 20 days of the date hereof and renewals of such policy or policies at least 15 days prior to the expiration date(s) thereof, said renewals to be marked "paid" by the issuing company or agent; that receipt by the Mortgagee of any information under this Section shall not be construed as an acceptance of the adequacy of the insurance required hereby; and, that any insurance payable by reason of loss or damage to the Collateral is proceeds hereunder.

12. Loss or Damage

In the event of damage to or loss of any of the Collateral, with respect to that Collateral, Mortgagor will place the Collateral in the repair, condition and working order required hereby or replace the same with like equipment in the repair, condition and working order which the replaced Collateral was prior to the damage or loss. If the loss or damaged Collateral was one or more of the Units, the substituted Unit(s) will be described in a Supplemental Schedule to be delivered under the provisions of Section 9 hereof.

All proceeds of insurance payable for any such damage or loss, and any and all payments for such damage or loss payable to Mortgagor by any third party (for example, a railroad) or its insurer, shall be proceeds of the Colla-

teral and shall be used only for replacement or repair of the Collateral, except that, if Mortgagor is in default hereunder, the Mortgagee may, and hereby is authorized by Mortgagor to, direct any party owing such payment to make the same to the Mortgagee directly, to be applied against the Obligations in compliance herewith.

13. Substituted or Additional Collateral

If, by reason of events described in Section 12 hereof, because of default under Section 16, because the Mortgagee believes that the prospect of payment or performance hereunder or under the Attendant Agreements is impaired, or for any other reason, the Mortgagee in good faith desires additional or substitute security hereunder, Mortgagor shall, upon receipt of notice of such desire from the Mortgagee, furnish such additional Collateral of the same or similar type acceptable to the Mortgagee. Such delivery will be accompanied by all documents required by the Loan Agreement and hereby for any Advancement and for any addition of Collateral.

14. No Assignment

Mortgagor will not sell, assign, sublet, pledge, hypothecate or otherwise encumber or suffer a lien upon or against any interest in this Mortgage without the prior written consent of the Mortgagee. Mortgagee may assign this Mortgage or any right and title it has hereunder upon written notice thereof to Mortgagor and such assignment shall be on terms and conditions not inconsistent herewith.

15. Opinion of Counsel

Prior to the First Advancement under the Loan Agreement or the Notes, Mortgagor shall deliver to the Mortgagee such opinions of Counsel as are required by the Loan Agreement. Also prior to the First Advancement, Mortgagor shall deliver to the Mortgagee the favorable opinion of Counsel (which may make such qualifications and statements as are permitted by the Loan Agreement), to the effect that:

(a) This Mortgage has been duly executed by Mortgagor and constitutes the legal, valid and binding obligation of Mortgagor, enforceable in accordance herewith; and

(b) The Guaranty hereof by Sales Co. has been duly executed and constitutes the legal, valid and binding obligation of Sales Co., enforceable in accordance with its terms; and

(c) Neither Mortgagor nor its opining counsel know of any reason suggesting that any person other than the Mortgagee may claim a lien, charge or encumbrance upon or title to any of the Units in Mortgagor's possession, when occurring and the Mortgagee's lien and security interest therein is first and best; and

(d) Neither Mortgagor nor its opining counsel know of any requirement for recording, filing, or depositing this Mortgage, or any information hereon, other than with

the Interstate Commerce Commission in compliance with 49 United States Code §11303 and regulations thereunder, which is necessary to preserve or protect Mortgagee's or its assignees' title to and interest in the Units; and

(e) Neither Mortgagor nor its opining counsel know of any requirement for recording, filing or depositing financing statements, or other documents in the form or forms to be approved in said opinion, to perfect the Mortgagee's interests in the Collateral other than the Units except in such places and with such officers as are specified in said opinion.

In addition, each delivery to Mortgagee of a Supplemental Schedule hereunder shall be accompanied by an additional favorable opinion of Counsel with respect to the matters covered in subparagraphs (a), (b), (c) and (d) of this paragraph as those matters relate to the Collateral covered by such Supplemental Schedule and stating that filing under 49 U.S.C. §11303 of the accompanying Supplemental Schedule will perfect in the Mortgagee a first and best lien in the Units identified therein.

If at any time or times when this Mortgage is in effect any opinion under this Section, or any item contained therein, or any fact upon which the same is based, is subject to change, Mortgagor and Counsel will give the Mortgagee notice thereof immediately upon gaining knowledge or notice of the same.

16. Default

Mortgagor shall be deemed to be in default hereunder in the event that an Event of Default should occur under the Loan Agreement including, without limitation Section 9.1 thereof, or that

(a) Mortgagor should fail to make any payment on the Indebtedness when due; or

(b) Mortgagor should default in the payment or performance of any of the Obligations or in the payment or performance of any of the terms, conditions, covenants or warranties of this Agreement, the Loan Agreement, the Equipment Security Agreement or any of the other Attendant Agreements and such failure should continue uncured within ten days after notice thereof is given Mortgagor by the Mortgagee; or

(c) any warranty, representation, statement, or opinion made or furnished to the Mortgagee by or on behalf of Mortgagor or Guarantor in connection with this Agreement or to induce the Mortgagee to make an advancement or extend credit of any kind to Mortgagor should prove to have been false in any material respect when made or furnished or should become false and remain uncorrected; or

(d) any substantial loss, theft or destruction of or damage to (not replaced or repaired by insurance proceeds paid within 90 days thereof) the Collateral should occur; or

(e) Mortgagor or Guarantor should make an assignment for the benefit of creditors, should suspend business or

commit any act amounting to business failure, or should make a voluntary assignment or transfer of any interest in any of the Collateral (except as expressly authorized by the Mortgagee in writing) or in all or substantially all of its property; or

(f) if a petition under any chapter of the Bankruptcy Act, as amended, or for the appointment of a receiver of all or any part of the property of Mortgagor or Guarantor, or under any other proceeding for the relief of debtors, should be filed by or against Coal Co. or Sales Co.

17. Enforcement of Security and Remedies

In the event of default hereunder or at any time the Mortgagee in good faith believes that the prospect of payment or performance of the Indebtedness is impaired (the facts and circumstances giving rise to such belief continuing uncorrected for ten days subsequent to the Mortgagee's transmission of written or telegraphic or telephonic notice thereof to Mortgagor), then, or at any time thereafter (such default not having previously been cured), the Mortgagee may declare all of the Obligations and Indebtedness to be immediately due and payable, without notice or demand therefor, and shall then have all remedies hereunder, under the Loan Agreement and under the other Attendant Agreements and all the remedies of a secured party under the laws of the State of Ohio, or any other applicable laws, including, without limitation, the right to take possession of the tangible items of the Collateral, and for that purpose the Mortgagee may require Mortgagor to make the Collateral and the records thereof available to the Mortgagee at a place to

be designated by the Mortgagee reasonably convenient to both parties and may, so far as Mortgagor can give authority therefor, enter upon any premises on which the Collateral or any part or records thereof may be situated and remove the same therefrom, and Mortgagor hereby waives and releases the Mortgagee of and from any and all claims in connection with such removal.

The parties hereto recognize that the Collateral may and probably will be widely scattered geographically, difficult of preservation and disposition, important to the continued operation of public utilities and industries and subject to complex maintenance and management. Accordingly, those parties agree that, after default, the Mortgagee is to have the widest possible latitude to preserve and protect the Collateral and the Mortgagee's security therein and agree further that, at the option of the Mortgagee, the Mortgagee shall have the unqualified right to appointments of receivers for the preservation, possession, protection and disposition of all or part of the Collateral and the collection and protection for the Mortgagee of any proceeds of use or disposition thereof and/or to do any other thing and exercise any rights or remedies which the Mortgagee may or might, with or without judicial process, do or exercise.

After the Mortgagee takes or receives possession of the Collateral following default hereunder, whether the same be on premises of Mortgagor or otherwise, the Mortgagee may sell, lease or otherwise dispose of the Collateral in any

manner permitted by law, and if such notice is required by law, the Mortgagee will give Mortgagor written notice of the time and place of any public sale of the Collateral or of the time after which any private sale or other intended disposition thereof is to be made, and at any such public or private sale the Mortgagee may purchase all or any part of the Collateral. The parties hereto agree that notice under this paragraph shall not be unreasonable as to time if given in compliance herewith 10 days prior to sale or other disposition.

To the extent permitted by applicable law, Mortgagor hereby waives any rights for or hereafter conferred by statute or otherwise which may require the Mortgagee to sell, lease or otherwise use any Collateral in mitigation of the Mortgagee's damages as set forth in this Section or which may otherwise limit or modify any of the Mortgagee's rights or remedies under this Section. However, in making the waivers of this paragraph, Mortgagor does not waive its right to any notice of sale of Collateral and does not waive any claim or defense based upon the allegation that Mortgagee has failed to dispose of any collateral in a commercially reasonable manner, within the guidelines set forth in this Section.

Mortgagor shall pay to Mortgagee, on demand and as part of the Obligations hereunder, all costs and expenses, including court costs, legal expenses and reasonable attorneys' fees, incurred by the Mortgagee in exercising any of

its rights or remedies hereunder or enforcing any of the terms, conditions or provisions hereof.

18. Concurrent Remedies

No right or remedy of the Mortgagee hereunder shall be exclusive of any other remedy herein or by law provided; each right or remedy shall be cumulative and in addition to every other right or remedy and, in addition, the exercise of any remedy by the Mortgagee hereunder shall not of itself constitute a recognition of a default of all provisions hereof or of an intent by the Mortgagee to terminate all the provisions hereof. Moreover, a failure of the Mortgagee to insist upon strict compliance with the terms hereof or to assert any right or remedy hereunder shall not be a waiver of any default and shall not be determined to constitute a modification of the agreements of the parties hereto or the terms hereof or to establish any claim or defense.

19. Mortgagee's Payment -- Late Payment

In the event that Mortgagor should fail duly and promptly to perform any of the things required to be performed hereunder, the Mortgagee may, at its or their option, immediately or at any time thereafter, perform the same for the account of Mortgagor without thereby waiving any default, and any amount paid or expenses or liability incurred by the Mortgagee in such performance, together with interest

thereon until paid at the rate specified in paragraph 10.6 of the Loan Agreement, shall be payable to the Banks by Mortgagor on demand and shall be and become part of the Obligations secured hereunder.

In the event that any amount due and payable from Mortgagor remains overdue for more than 15 days, Mortgagor shall pay the Mortgagee on demand and as part of the Obligations interest on such amount from the date payable to the date of actual payment at the rate specified in paragraph 10.7 of the Loan Agreement.

20. Notice

Except as otherwise specifically provided herein, notice shall be deemed to have been properly given to Mortgagor when in writing deposited in the United States registered or certified mail, postage prepaid and addressed to South-East Coal Company, P.O. Box 332, Irvine, Kentucky 40336, whether or not the same is actually received by Mortgagor; and notice shall be deemed to have been properly given to Guarantor when in writing and deposited in the United States registered or certified mail, postage prepaid and addressed to South-East Coal Sales Company, 88 East Broad Street, Columbus, Ohio 43215, whether or not the same is actually received by Guarantor. Any communication to Mortgagee shall be deemed properly given if similarly mailed to its Commercial Loan Department at its particular address

as stated herein to the attention of its officer or agent who executed this Mortgage. Any party hereto may at any time change its address for notification purposes by mailing, as aforesaid, a notice stating the change and setting forth the new address.

21. Miscellaneous

Unless otherwise specifically provided herein, the Obligations of Mortgagor hereunder shall not be contingent or executory and shall continue notwithstanding termination hereof or the exercise by Mortgagee of any right or remedy hereunder.

All covenants and agreements in this Mortgage contained by or on behalf of any of the parties hereto shall bind and inure to the benefit of the respective successors and assigns of the parties hereto whether so expressed or not, except that neither Sales Co. nor Coal Co. shall have the right to assign its rights hereunder or any interest herein without the prior written consent of the Mortgagee.

To the extent possible this Agreement succeeds (in the case of the Units) and supplements (in all other cases) the agreements between CNB and Borrowers in existence at the date hereof; in the event of direct conflict between those agreements and this Agreement, the provisions of this Agreement will prevail.

The titles to the various sections of this Agreement are solely for convenience and are not a part of the Agreement for purposes of interpreting the provisions hereof.

Unless otherwise specified, the terms "herein," "hereunder," "hereto," "herewith" and words of similar import refer to this entire Agreement; the singular includes the plural and conversely.

This Mortgage, the Schedules, and the Perfection Documents, or any other instruments, documents, or agreements to be delivered hereunder, are being executed and delivered and are intended to be performed in the State of Ohio. The parties hereto agree that the law of the State of Ohio shall govern their rights and duties hereunder, excepting applicable federal law and except only to the extent precluded by other states' laws of mandatory application.

As a specifically bargained inducement for the Mortgagee to extend credit giving rise to the Indebtedness, all parties hereto agree that ANY ACTION, SUIT OR PROCEEDING IN RESPECT OF OR ARISING FROM OR OUT OF THIS AGREEMENT, ITS MAKING, VALIDITY OR PERFORMANCE, SHALL, AT THE SOLE OPTION OF THE MORTGAGEE, BE PROSECUTED AS TO ALL PARTIES AND THEIR SUCCESSORS AND ASSIGNS AT COLUMBUS, OHIO. EACH PARTY HERETO CONSENTS TO AND SUBMITS TO THE EXERCISE OF JURISDICTION OVER ITS PERSON BY ANY COURT SITUATED AT COLUMBUS, OHIO, AND HAVING JURISDICTION OVER THE SUBJECT MATTER. Coal Co. and Sales Co. each hereby irrevocably appoint and designate Louis A. Nobile, Jr., whose address is 100 East Broad Street, Columbus, Ohio 43215, or any other person whom the Mortgagee,

after giving Coal Co. and Sales Co. five (5) days' written notice thereof may appoint, as its true and lawful attorney-in-fact and duly authorized agent for service of legal process and agrees that service of such process upon such party shall constitute personal service of such process upon each of them. Such attorney-in-fact, within five (5) days after receipt of such process, shall forward the same, by certified or registered mail, together with all papers affixed thereto, to Coal Co. or Sales Co., as the case may be, at its address as set forth herein.

This written Agreement is exclusive as to its subject matter and no inconsistent oral agreement shall be binding.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective duly authorized officers as of the 28th day of December, 1978.

THE CITY NATIONAL BANK & TRUST
COMPANY OF COLUMBUS, Columbus, Ohio
By *Philip C. Parker*
Philip C. Parker
Assistant Vice President

SOUTH-EAST COAL COMPANY
By *Harry L. Van*
Its *President*

M O R T G A G E E

(SEAL)

M O R T G A G O R

SOUTH-EAST COAL SALES COMPAN

By Thomas James
Its Treasurer

G U A R A N T O R

All parties' executions
signed and acknowledged
in the presence of:

[Signature]
[Signature]

SCHEDULE 1

To Mortgage of Railroad Rolling Stock
Dated December 21, 1978

Description of Equipment (Units):

Type	ARR Mechanical Designation	Number of Units*
41'8" - 70 ton hopper cars	HT	692
Identifying Marks**	and	Road or Serial Numbers
<u>SECX055707</u>	<u>SECX768998</u>	<u>SECX751172</u>
<u>SECX055722</u>	<u>SECX769024</u>	<u>SECX751175</u>
<u>SECX055736</u>	<u>SECX769099</u>	<u>SECX751178</u>
<u>SECX055745</u>	<u>SECX769161</u>	<u>SECX751181</u>
<u>SECX055756</u>	<u>SECX769234</u>	<u>SECX751184</u>
<u>SECX751156</u>	<u>SECX769305</u>	<u>SECX751187</u>
<u>SECX751159</u>	<u>SECX769366</u>	<u>SECX751191</u>
<u>SECX751162</u>	<u>SECX769413</u>	<u>SECX768064</u>
<u>SECX751165</u>	<u>SECX769449</u>	<u>SECX768120</u>
<u>SECX751168</u>	<u>SECX769513</u>	<u>SECX768186</u>
<u>SECX751171</u>	<u>SECX769560</u>	<u>SECX768268</u>
<u>SECX751174</u>	<u>SECX769617</u>	<u>SECX768337</u>
<u>SECX751177</u>	<u>SECX769713</u>	<u>SECX768411</u>
<u>SECX751180</u>	<u>SECX769744</u>	<u>SECX768436</u>
<u>SECX751183</u>	<u>SECX769856</u>	<u>SECX768513</u>
<u>SECX751186</u>	<u>SECX769906</u>	<u>SECX768687</u>
<u>SECX751190</u>	<u>SECX769944</u>	<u>SECX768719</u>
<u>SECX768024</u>	<u>SECX769980</u>	<u>SECX768752</u>
<u>SECX768107</u>	<u>SECX770036</u>	<u>SECX768808</u>
<u>SECX768173</u>	<u>SECX770123</u>	<u>SECX768899</u>
<u>SECX768241</u>	<u>SECX770175</u>	<u>SECX768953</u>
<u>SECX768297</u>	<u>SECX055712</u>	<u>SECX769015</u>
<u>SECX768401</u>	<u>SECX055728</u>	<u>SECX769079</u>
<u>SECX768421</u>	<u>SECX055741</u>	<u>SECX769100</u>
<u>SECX768505</u>	<u>SECX055748</u>	<u>SECX769173</u>
<u>SECX768640</u>	<u>SECX055763</u>	<u>SECX769243</u>
<u>SECX768706</u>	<u>SECX751157</u>	<u>SECX769336</u>
<u>SECX768726</u>	<u>SECX751160</u>	<u>SECX769377</u>
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		<u>SECX769722</u>
		<u>SECX769805</u>
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		<u>SECX769084</u>
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		<u>SECX769222</u>
		<u>SECX769262</u>
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		<u>SECX769695</u>
		<u>SECX769741</u>
		<u>SECX769818</u>
		<u>SECX769901</u>
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		<u>SECX769975</u>
		<u>SECX770029</u>
		<u>SECX770114</u>
		<u>SECX770170</u>
		<u>SECX770215</u>

<u>SECX770245</u>	<u>SECX770252</u>	<u>SECX770254</u>	<u>SECX772971</u>	<u>SECX772976</u>
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<u>SECX770331</u>	<u>SECX770404</u>	<u>SECX770409</u>	<u>SECX773021</u>	<u>SECX773031</u>
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<u>SECX770877</u>	<u>SECX770881</u>	<u>SECX770882</u>	<u>SECX773199</u>	<u>SECX773201</u>
<u>SECX770894</u>	<u>SECX770914</u>	<u>SECX770915</u>	<u>SECX773214</u>	<u>SECX773218</u>
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<u>SECX770989</u>	<u>SECX771025</u>	<u>SECX771034</u>	<u>SECX773270</u>	<u>SECX773271</u>
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<u>SECX771081</u>	<u>SECX771093</u>	<u>SECX771108</u>	<u>SECX773339</u>	<u>SECX773340</u>
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<u>SECX771247</u>	<u>SECX771252</u>	<u>SECX771263</u>	<u>SECX773437</u>	<u>SECX773443</u>
<u>SECX771287</u>	<u>SECX771290</u>	<u>SECX771295</u>	<u>SECX773454</u>	<u>SECX773456</u>
<u>SECX771297</u>	<u>SECX771300</u>	<u>SECX771302</u>	<u>SECX773462</u>	<u>SECX773469</u>
<u>SECX771312</u>	<u>SECX771316</u>	<u>SECX771335</u>	<u>SECX773472</u>	<u>SECX773477</u>
<u>SECX771339</u>	<u>SECX771343</u>	<u>SECX771366</u>	<u>SECX773487</u>	<u>SECX773489</u>
<u>SECX771368</u>	<u>SECX771370</u>	<u>SECX771376</u>	<u>SECX773491</u>	<u>SECX773493</u>
<u>SECX771379</u>	<u>SECX771384</u>	<u>SECX771399</u>	<u>SECX773503</u>	<u>SECX773513</u>
<u>SECX771409</u>	<u>SECX771445</u>	<u>SECX771455</u>	<u>SECX773524</u>	<u>SECX773530</u>
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<u>SECX771602</u>	<u>SECX771608</u>	<u>SECX771609</u>	<u>SECX773557</u>	<u>SECX773558</u>
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<u>SECX771990</u>	<u>SECX771992</u>	<u>SECX771996</u>	<u>SECX773730</u>	<u>SECX773733</u>
<u>SECX772004</u>	<u>SECX772005</u>	<u>SECX772029</u>	<u>SECX773739</u>	<u>SECX773744</u>
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<u>SECX772060</u>	<u>SECX772065</u>	<u>SECX772081</u>	<u>SECX773770</u>	<u>SECX773773</u>

<u>SECX772986</u>	<u>SECX772082</u>	<u>SECX772088</u>	<u>SECX772092</u>
<u>SECX773000</u>	<u>SECX772093</u>	<u>SECX772116</u>	<u>SECX772122</u>
<u>SECX773009</u>	<u>SECX772127</u>	<u>SECX772133</u>	<u>SECX772135</u>
<u>SECX773032</u>	<u>SECX772143</u>	<u>SECX772151</u>	<u>SECX772159</u>
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<u>SECX773070</u>	<u>SECX772170</u>	<u>SECX772176</u>	<u>SECX772178</u>
<u>SECX773090</u>	<u>SECX772183</u>	<u>SECX772190</u>	<u>SECX772194</u>
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<u>SECX773252</u>	<u>SECX772344</u>	<u>SECX772354</u>	<u>SECX772362</u>
<u>SECX773269</u>	<u>SECX772364</u>	<u>SECX772368</u>	<u>SECX772370</u>
<u>SECX773283</u>	<u>SECX772381</u>	<u>SECX772383</u>	<u>SECX772385</u>
<u>SECX773312</u>	<u>SECX772388</u>	<u>SECX772398</u>	<u>SECX772412</u>
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<u>SECX773377</u>	<u>SECX772488</u>	<u>SECX772499</u>	<u>SECX772501</u>
<u>SECX773385</u>	<u>SECX772505</u>	<u>SECX772506</u>	<u>SECX772515</u>
<u>SECX773406</u>	<u>SECX772521</u>	<u>SECX772523</u>	<u>SECX772532</u>
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<u>SECX773445</u>	<u>SECX772568</u>	<u>SECX772580</u>	<u>SECX772584</u>
<u>SECX773461</u>	<u>SECX772589</u>	<u>SECX772594</u>	<u>SECX772600</u>
<u>SECX773471</u>	<u>SECX772608</u>	<u>SECX772616</u>	<u>SECX772624</u>
<u>SECX773479</u>	<u>SECX772638</u>	<u>SECX772640</u>	<u>SECX772646</u>
<u>SECX773490</u>	<u>SECX772649</u>	<u>SECX772654</u>	<u>SECX772655</u>
<u>SECX773497</u>	<u>SECX772657</u>	<u>SECX772658</u>	<u>SECX772664</u>
<u>SECX773521</u>	<u>SECX772670</u>	<u>SECX772673</u>	<u>SECX772676</u>
<u>SECX773531</u>	<u>SECX772679</u>	<u>SECX772687</u>	<u>SECX772700</u>
<u>SECX773543</u>	<u>SECX772709</u>	<u>SECX772724</u>	<u>SECX772730</u>
<u>SECX773552</u>	<u>SECX772733</u>	<u>SECX772751</u>	<u>SECX772752</u>
<u>SECX773562</u>	<u>SECX772756</u>	<u>SECX772758</u>	<u>SECX772761</u>
<u>SECX773571</u>	<u>SECX772764</u>	<u>SECX772768</u>	<u>SECX772771</u>
<u>SECX773582</u>	<u>SECX772772</u>	<u>SECX772774</u>	<u>SECX772781</u>
<u>SECX773592</u>	<u>SECX772785</u>	<u>SECX772789</u>	<u>SECX772795</u>
<u>SECX773599</u>	<u>SECX772797</u>	<u>SECX772809</u>	<u>SECX772811</u>
<u>SECX773610</u>	<u>SECX772819</u>	<u>SECX772829</u>	<u>SECX772835</u>
<u>SECX773630</u>	<u>SECX772836</u>	<u>SECX772839</u>	<u>SECX772841</u>
<u>SECX773649</u>	<u>SECX772843</u>	<u>SECX772847</u>	<u>SECX772851</u>
<u>SECX773662</u>	<u>SECX772852</u>	<u>SECX772857</u>	<u>SECX772868</u>
<u>SECX773671</u>	<u>SECX772875</u>	<u>SECX772880</u>	<u>SECX772882</u>
<u>SECX773685</u>	<u>SECX772896</u>	<u>SECX772898</u>	<u>SECX772899</u>
<u>SECX773701</u>	<u>SECX772902</u>	<u>SECX772908</u>	<u>SECX772910</u>
<u>SECX773710</u>	<u>SECX772913</u>	<u>SECX772918</u>	<u>SECX772921</u>
<u>SECX773728</u>	<u>SECX772923</u>	<u>SECX772931</u>	<u>SECX772933</u>
<u>SECX773738</u>	<u>SECX772934</u>	<u>SECX772935</u>	<u>SECX772937</u>
<u>SECX773757</u>	<u>SECX772941</u>	<u>SECX772945</u>	<u>SECX772947</u>
<u>SECX773769</u>	<u>SECX772948</u>	<u>SECX772953</u>	<u>SECX772957</u>
<u>SECX773777</u>	<u>SECX772960</u>	<u>SECX772961</u>	<u>SECX772967</u>

<u>SECX773780</u>	<u>SECX773787</u>	<u>SECX773790</u>
SECX773792	SECX773795	SECX773800
SECX773805	SECX773807	SECX773810
<u>SECX773812</u>	<u>SECX773816</u>	<u>SECX773827</u>
SECX773847	SECX773848	SECX773850
SECX773851	SECX773852	SECX773862
<u>SECX773865</u>	<u>SECX773867</u>	<u>SECX773868</u>
SECX773883	SECX773884	SECX773885
SECX773887	SECX773888	SECX773889
<u>SECX773900</u>	<u>SECX773905</u>	<u>SECX773909</u>
SECX773910	SECX773912	SECX773918
SECX773920	SECX773921	SECX773925
<u>SECX773926</u>	<u>SECX773928</u>	<u>SECX773930</u>
SECX773935	SECX773936	SECX773940
SECX773944	SECX773950	SECX773953
<u>SECX773955</u>	<u>SECX773964</u>	<u>SECX773972</u>
SECX773974	SECX773975	SECX773980
SECX773982	SECX773993	SECX773994
<u>SECX773997</u>	<u>SECX773998</u>	<u>SECX774003</u>
SECX774004	SECX774010	SECX774012
SECX774025	SECX774029	SECX774037
<u>SECX774041</u>	<u>SECX774043</u>	SECX774044

*Included in the property covered by the aforesaid mortgage is rolling stock used or intended for use in connection with interstate commerce, or interests therein, owned by South-East Coal Company at the date of said mortgage or thereafter acquired by it or its successors and to be remarked with its reporting marks, "SECX."

**Each Unit will have marked or stenciled on each side in letters not less than one inch in height the following:

THE CITY NATIONAL BANK & TRUST COMPANY
OF COLUMBUS, MORTGAGEE. MORTGAGE RECORDED
UNDER SECTION 11303 OF THE INTERSTATE
COMMERCE ACT.

SUPPLEMENTAL SCHEDULE NO. _____

Referenced Document: Mortgage of Railroad Rolling Stock
dated 12/28/78, 1978,
recorded with the Interstate Commerce
Commission pursuant to 49 U.S.C. 11303
on 12/29/78, 1978, Re-
cordation No. 7976.

Mortgagor: South-East Coal Company
Irvine, Kentucky 40336

Guarantor: South-East Coal Sales Company
88 East Broad Street
Columbus, Ohio 43215

Mortgagee: The City National Bank & Trust Company
of Columbus
100 East Broad Street
Columbus, Ohio 43215

A D D

Description of Equipment (Units):

<u>Type</u>	AAR <u>Mechanical Designation</u>	Number of <u>Units</u>	Identifying <u>Marks*</u>	Road or Serial <u>Numbers</u>
-------------	--	------------------------------	------------------------------	-------------------------------------

*Each Unit will have marked or stenciled on each side in letters not less than one inch in height the following:

THE CITY NATIONAL BANK & TRUST COMPANY
OF COLUMBUS, MORTGAGEE. MORTGAGE
RECORDED UNDER SECTION 11303 OF THE
INTERSTATE COMMERCE ACT.

Approved and agreed to this ____ day of _____,
19____, as a Supplemental Schedule to the Mortgage by and
among THE CITY NATIONAL BANK & TRUST COMPANY OF COLUMBUS,
SOUTH-EAST COAL COMPANY AND SOUTH-EAST COAL SALES COMPANY
(as Guarantor) dated the ____ day of _____, 1978,
and hereby made a part of that Mortgage.

Signed and acknowledged
in the presence of:

(SEAL) SOUTH-EAST COAL COMPANY

By _____

Its _____

MORTGAGOR

(SEAL) SOUTH-EAST COAL SALES COMPANY

By _____

Its _____

GUARANTOR

THE CITY NATIONAL BANK & TRUST
COMPANY OF COLUMBUS, Columbus, Ohio

By _____

MORTGAGEE

STATE OF OHIO,
COUNTY OF FRANKLIN, ss:

On this ____ day of _____, 197__, before me personally appeared _____, to me personally known, who being by me duly sworn, says that he is the _____ of The City National Bank & Trust Company of Columbus, that said instrument was signed on behalf of said association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association for the purposes therein stated.

(SEAL)

Notary Public

My commission expires _____

STATE OF OHIO
COUNTY OF FRANKLIN, ss:

On this ____ day of _____, 197__, before me, personally appeared _____, to me personally known, who being by me duly sworn, says that he is the _____ of South-East Coal Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation for the purposes therein stated.

(SEAL)

Notary Public

My commission expires _____

STATE OF OHIO
COUNTY OF FRANKLIN, ss:

On this _____ day of _____, 197__, before me, personally appeared _____, to me personally known, who being by me duly sworn, says that he is the _____ of South-East Coal Sales Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation for the purposes therein stated.

(SEAL)

Notary Public

My commission expires _____

GUARANTY

(Of Obligations Under Mortgage of Railroad Rolling Stock)

THIS GUARANTY is made this 28th day of December, 1978, by the undersigned ("Guarantor"), to and for the benefit of The City National Bank & Trust Company of Columbus the "Mortgagee".

IN CONSIDERATION of the mutual covenants and agreements hereinafter set forth, including without limitation loans made and to be made by the Mortgagee and indebtedness to the Mortgagee of South-East Coal Company, a Kentucky corporation having its principal office and place of business in Irvine, Kentucky 40336, hereinafter called "Mortgagor," evidenced and to be evidenced in part by promissory note(s) of even date herewith (the "Notes") and secured by a Mortgage of even date herewith by and between Mortgagor and those parties (the "Mortgage"), Guarantor, incorporating hereinto the terms and conditions of the Mortgage (including the Loan Agreement attached thereto as an Exhibit) and using the terms herein as defined therein, and for the purpose of inducing Mortgagee to make the loans aforesaid, hereby warrants, covenants and agrees as follows:

1. Guarantor hereby agrees to enter into the Mortgage together with Mortgagor and, to the extent of its possession or control of any of the Collateral, as a mortgagor or debtor thereunder.

2. Guarantor unconditionally and absolutely guarantees the due and punctual payment of the Notes, any interest thereon and any other monies due or which may become due thereon, and the due and punctual performance and observance by Mortgagor of the Obligations and all the other terms, covenants and conditions of the Notes, the Mortgage, the said Loan Agreement and all other documents executed in connection with said loans, whether according to the present terms thereof, at any earlier or accelerated date or dates as provided therein, or pursuant to any extension of time or to any change or changes in the terms, covenants and conditions thereof now, or at any time hereafter, made or granted.

3. Guarantor hereby waives diligence, presentment, protest, notice of dishonor, demand for payment, extension of time for payment, notice of acceptance of this Guaranty, notice of nonpayment at maturity or otherwise, notice of indulgences and notices of every kind, and consents to any and all forbearances and extensions of the time of payment of the Notes, and to any and all changes in the terms, covenants and conditions thereof hereafter made or granted and to any and all substitutions, exchanges or releases of all or any part of the Collateral therefor; it being the intention hereof that Guarantor shall remain liable until such amount of principal of the Notes, with interest, and any other sums due or to become due thereon or under the Mortgage or any other agreement, shall have been fully paid

and the terms, covenants and conditions shall have been fully performed and observed by Mortgagor, notwithstanding any act, commission or thing which might otherwise operate as a legal or equitable discharge of Guarantor.

4. Guarantor agrees that it shall have no right of subrogation whatsoever with respect to the aforesaid indebtedness, or to any monies due or paid thereon or any Collateral securing the same unless and until Mortgagee shall have received full payment of all sums at any time evidenced by the Notes and/or secured by the Mortgage.

5. Mortgagee shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral if Mortgagee takes such action for that purpose as shall be requested in writing by Guarantor, but failure of Mortgagee to comply with any such request shall not of itself be deemed a failure to exercise reasonable care, and no failure of Mortgagee to preserve or protect any rights in the Collateral as against prior or subsequent parties, or to do any act not so required by Guarantor shall be deemed a failure to exercise reasonable care in the custody or preservation of the Collateral.

6. Guarantor agrees that this Guaranty may be enforced by Mortgagee without first resorting to or exhausting any other security or Collateral or without first having recourse to the Notes or any of the property covered by the Mortgage through foreclosure proceedings or otherwise;

however, nothing contained herein shall prevent Mortgagee from instituting and maintaining suit on the Notes, or any one of them, foreclosing or causing to be foreclosed the lien(s) of the Mortgage or from exercising any other rights hereunder, and if such foreclosure or other remedy is availed of only the net proceeds therefrom, after deduction of all charges and expenses of every kind and nature whatsoever, shall be applied for reduction of the amount due on the Notes or under the Mortgage, and Mortgagee shall not be required to institute or prosecute proceedings to recover any deficiency as a condition of payment hereunder or of enforcement hereof. At any sale of the security or Collateral for the indebtedness of Mortgagor or any part thereof, whether by trustee's sale, sale by a court of competent jurisdiction, foreclosure or otherwise, Mortgagee may at its discretion purchase all or any part of such Collateral so sold or offered for sale for its own account and may apply the amount bid therefor against the balance due it pursuant to the terms of the Notes and the Mortgage.

7. Guarantor agrees that this Guaranty shall inure to the benefit of and may be enforced by Mortgagee and any subsequent holder or holders of the Notes, and any assignee of the Mortgage, and shall be binding upon and enforceable against Guarantor and Guarantor's legal representatives, successors and assigns.

8. Any one or more successive and/or concurrent actions may be brought hereon against Guarantor, or any one of them if more than one, either in the same action, if any, brought against Mortgagor, the then owner of the Collateral securing the Notes, and/or any other party, or in separate actions, as often as the legal holder or holders of the Notes, in its or their sole discretion may deem advisable.

IN WITNESS WHEREOF, SOUTH-EAST COAL SALES COMPANY, Guarantor, has caused this Guaranty to be executed by its duly authorized representative on the day and year first aforesaid.

(SEAL)

SOUTH-EAST COAL SALES COMPANY

Signed and acknowledged
in the presence of:

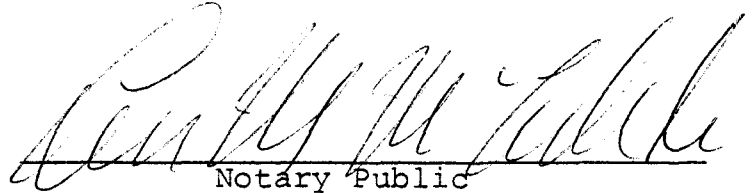
Harry L. V. Jr.
James D. V.

By Thomas J. James
Its Treasurer

STATE OF OHIO,
COUNTY OF FRANKLIN, ss:

On this 28th day of December, 1978, before me personally appeared Philip C. Parker, to me personally known, who being by me duly sworn, says that he is the Assistant Vice President of The City National Bank & Trust Company of Columbus, that said instrument was signed on behalf of said association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association for the purposes therein stated.

(SEAL)


Notary Public

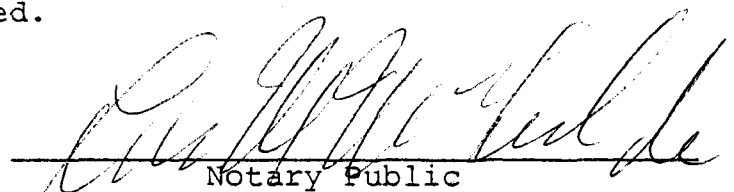
My commission expires _____

LEON M. MCCORKLE, Jr., Attorney At Law
NOTARY PUBLIC-STATE OF OHIO
MY COMMISSION HAS NO EXPIRATION DATE
SECTION 147.03 R. C.

STATE OF OHIO
COUNTY OF FRANKLIN, ss:

On this 28th day of December, 1978, before me, personally appeared Harry J. Vance, Jr., to me personally known, who being by me duly sworn, says that he is the President of South-East Coal Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation for the purposes therein stated.

(SEAL)

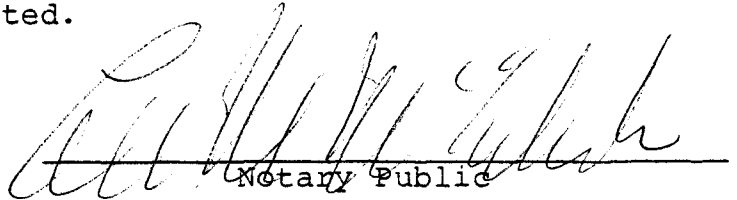

Notary Public

My commission expires _____

STATE OF OHIO
COUNTY OF FRANKLIN, ss:

On this 20th day of December, 1978, before me, personally appeared Thomas S. Jones, to me personally known, who being by me duly sworn, says that he is the Treasurer of South-East Coal Sales Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation for the purposes therein stated.

(SEAL)


Notary Public

My commission expires _____

LEON M. McCORKLE, Jr., Attorney At Law
NOTARY PUBLIC - STATE OF OHIO
MY COMMISSION HAS NO EXPIRATION DATE
SECTION 147.03 R. C.

REGISTRATION NO. 9776
JAN 11 1971
INTERSTATE COMMERCE COMMISSION

E x h i b i t "A"

L O A N A G R E E M E N T**Borrowers:**

South-East Coal Company

South-East Coal Sales Company

Lenders:

The City National Bank & Trust
Company of Columbus

Pittsburgh National Bank

Citizens Fidelity Bank and Trust Company

The First National Bank of Louisville

Agent:

The City National Bank & Trust
Company of Columbus

Dated: As of _____, 1978

LOAN AGREEMENT

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Schedules

1. CNB Agreements
2. KUC Agreement

Exhibits

- A. Promissory Notes
- B. Security Agreement, Equipment
- C. Mortgage of Railroad Rolling Stock, with Guaranty
- D. Opinion of Counsel

LOAN AGREEMENT

SOUTH-EAST COAL COMPANY, a corporation organized and existing under the laws of the Commonwealth of Kentucky, located at Irvine (mailing, P.O. Box 332), Kentucky 40336 ("Coal Co."), SOUTH-EAST COAL SALES COMPANY, a corporation organized and existing under the laws of the Commonwealth of Kentucky, located at 88 East Broad Street, Columbus, Ohio 43215 ("Sales Co."), THE CITY NATIONAL BANK & TRUST COMPANY OF COLUMBUS ("CNB"), a national banking association organized and existing under the laws of the United States, located at and with a mailing address of 100 East Broad Street, Columbus, Ohio 43215, PITTSBURGH NATIONAL BANK ("PNB"), a national banking association organized and existing under the laws of the United States, with an office at and mailing address of Fifth Avenue and Wood Street, Pittsburgh, Pennsylvania 15222, CITIZENS FIDELITY BANK AND TRUST COMPANY ("CFB"), a banking company organized and existing under the laws of the Commonwealth of Kentucky, with a mailing address of P.O. Box 33000, Louisville, Kentucky 40232, FIRST NATIONAL BANK OF LOUISVILLE ("FNB"), a national banking association organized and existing under the laws of the United States, with a mailing address of P. O. Box 36030, Louisville, Kentucky 40232 (CNB, PNB, CFB and FNB being hereinafter referred to collectively as the "Banks") and CNB, not in its individual capacity but as agent for the Banks hereunder (the "Agent"),

in consideration of the mutual covenants and agreements contained herein, hereby Recite and Agree as follows:

Section 1. Recitals

1.1 Coal Co. and Sales Co. are currently indebted to CNB in the amount of \$_____ (the "CNB Indebtedness").

1.2 The CNB Indebtedness is secured by security interests in receivables, inventory, railroad hopper cars, certain other equipment and inventory of Coal Co. and Sales Co. under agreements dated May 1, and July 30, 1975, and December 23, 1975 (the "CNB Agreements"), copies of which are appended hereto as Schedule 1.

1.3 Coal Co. and Sales Co. have entered into an agreement with Kentucky Utilities Company dated June 30, 1978 (the "KUC Agreement"), a copy of which is appended hereto as Schedule 2.

1.4 In order to consolidate and refinance the CNB Indebtedness, to expand and develop facilities for the fulfillment of the KUC Agreement, and to maintain and operate the said railroad equipment, Sales Co. and Coal Co. have applied to the Banks for loans to them on the terms and conditions hereof in an aggregate amount of \$11,600,000 (the "Commitment Amount").

1.5 To secure their borrowing hereunder, Coal Co. and Sales Co. have offered as collateral railroad hopper cars and other equipment, including that now secured to CNB, and such collateral is acceptable to the Banks.

1.6 Subject to the terms and conditions hereof, the Banks are agreed to such extensions of credit.

Section 2. Definitions

2.1 "Borrowers" means Coal Co. and Sales Co. collectively, jointly and severally;

2.2 "The Advancements" (singularly "Advancement") means the advancements made by the Banks hereunder;

2.3 "The Notes" means the promissory notes in the form of Exhibit "A" hereto covering the financing to be secured in part by rolling stock and equipment of Borrowers;

2.4 "The Equipment Security Agreement" means the agreement in the form of Exhibit "B" hereto securing the Indebtedness with equipment of Borrowers; and "The Mortgage" means the Mortgage of Railroad Rolling Stock, together with Sale Co.'s Guaranty attached thereto, in the form of Exhibit "C" hereto securing the Indebtedness;

2.5 "The Agreements" or "any Agreement," means all or any one of the agreements between Borrowers or any one of them and the Banks or any one of them relating to the Indebtedness or the Collateral, including without limitation this Agreement, the Equipment Security Agreement and the Mortgage;

2.6 "The Indebtedness" means all liabilities of Coal Co. and Sales Co., or either of them, to the Banks, or any one or more of them under or pursuant to this Agreement, created by the Advancements or otherwise hereunder, of

whatever kind and whenever created, whether or not given pursuant to commitment, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising;

2.7 "The Collateral" means all collateral, of whatever kind and whenever created or acquired, securing the Indebtedness, including that described in the Equipment Security Agreement and the Mortgage;

2.8 "The Perfection Documents" means all documents and instruments now or hereafter filed, placed or recorded with any public office in order to perfect or otherwise give notice of the Banks' interests in the Collateral;

2.9 "Consolidated" means the consolidation of the accounts of Borrowers (and any Subsidiaries) in accordance with generally accepted accounting principles applied in a manner consistent with practices of consolidation followed by the Borrower at the time of execution of this Agreement;

2.10 "Consolidated Tangible Net Worth" means the consolidated net worth of Coal Co. and all Subsidiaries less all consolidated intangible assets; both consolidated tangible net worth and consolidated intangible assets shall be determined in accordance with generally accepted accounting principles applied on a consistent basis; however, consolidated tangible net worth shall include no appraisal surplus of any type or description; "intangible assets" are here defined to include goodwill, patents, trademarks, franchises, licenses, excess

of cost over book value of assets acquired, deferred research and development expenses, deferred operational expenses of any type or description and any other assets which, under generally accepted accounting principles would be classified as intangible assets;

2.11 "Tangible Net Worth," in reference to either of Borrowers, means such net worth, not on a consolidated basis, determined in compliance with paragraph 2.10 hereof;

2.12 "Consolidated Current Assets" means all assets of Borrowers of a type which would, in accordance with generally accepted accounting principles, be classified as current assets, excluding however, (a) all prepaid expenses of every type and nature and (b) any amounts due from officers, directors, employees, shareholders, subsidiaries and affiliated companies;

2.13 "Consolidated Current Liabilities" means all liabilities of the Borrowers of a type which would, in accordance with generally accepted accounting principles, be classified as current liabilities;

2.14 "Consolidated Working Capital" means the excess of Consolidated Current Assets over Consolidated Current Liabilities.

2.15 "Funded Debt" means any obligation payable more than one year from the date of the creation thereof, which under generally accepted accounting principles is shown on the balance sheet as a liability, and "Current

Debt" means any obligation for borrowed money (and any negotiable instruments and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money) payable on demand or within a period of one year from the date of the creation thereof;

2.16 "Securities" means any authorized or outstanding shares of capital stock or any bonds, debentures, notes or other forms of indebtedness or equity interest of any corporation;

2.17 "Subsidiary" means any corporation organized under the laws of any state of the United States of America, a majority of the voting stock of which shall, at the time as of which any determination is being made, be owned by Sales Co. or Coal Co., either directly or through Subsidiaries;

2.18 "Financial Statements" means all balance sheets, operating statements and profit and loss statements, and other statements (for example, statements of sources and application of funds, statements of surplus and the like) given to any Bank hereunder and/or prepared in the ordinary course of business of Borrowers, all of which shall be prepared in accordance with generally accepted accounting principles consistently applied;

2.19 The definition of any document in this Section includes all present and future exhibits, schedules and amendments thereto under the terms thereof.

Section 3. Extensions of Credit

3.1 Subject to the terms and conditions hereof, the Banks agree to lend to Sales Co. and Coal Co., jointly and severally, the sum of \$11,600,000.

3.2 Principal Indebtedness and interest thereon, as set forth in the Notes, shall be payable as follows:

- (a) Interest only through December 31, 1979;
- (b) Commencing on the last day of January 1980, and continuing on the last day of each month thereafter through December 31, 1980, interest plus payments of principal of \$94,420 per month;
- (c) Commencing on the last day of January 1981, and continuing on the last day of each month thereafter until paid, interest plus payments of principal of \$174,450 per month;

3.3 Interest on the Notes shall be payable monthly in arrears, on the last day of each calendar month, computed on the daily unpaid balances of principal outstanding during that month, on the basis of a 360 day year, at a fluctuating rate as follows:

- (a) From the date of the Notes through December 31, 1980, the sum of one and three quarters percent (1.75%) per annum plus the prime rate of CNB for ninety day loans to responsible and substantial commercial borrowers in effect from time to time;

(b) From January 1, 1981, until paid, the sum of two percent (2%) per annum plus the prime rate of CNB for ninety day loans to responsible and substantial commercial borrowers in effect from time to time.

3.4 All payments received and collected by the Banks on the indebtedness evidenced by the Note shall be applied first to the payment of any interest due and second to the payment of the unpaid principal balances evidenced by the Notes.

3.5 Borrowers may prepay the Notes subject to the terms thereof in whole or in part at any time or from time to time, without premium or penalty, in an aggregate amount not less than \$100,000 (or the balance outstanding if less than \$100,000), upon at least three business days prior notice and received by the Agent. Each such notice shall specify the prepayment date and the principal amount of the Notes to be prepaid. Each prepayment of the Notes shall be accompanied by the payment of interest accrued on the principal amount so prepaid through the date of prepayment. All prepayments will be applied to the last maturing installments under the Notes, in reverse order.

3.6 All payments of principal of, and interest on, the Notes shall be made in Federal or other immediately available funds at the main office of the Agent in Columbus, Ohio, no later than twelve o'clock Noon Columbus time, on the date such payment is due.

3.7 All payments (including prepayments) of principal of, and interest on, the Notes shall be made to the Agent and such payment shall be for the account of the Banks in proportion to the principal amount of their Advancements and the amount of such payment shall be ratably distributed by the Agent to the Banks.

3.8 Whenever any payment to be made hereunder or under the Notes shall be stated to be due on a Saturday, Sunday, or public holiday under the laws of the State of Ohio, or any day when the office of the Agent is closed by reason of a declaration of emergency by the governing officials of the State of Ohio, such payment may be made on the next succeeding business day and such extension of time shall in such case be included in the computation of payment of interest hereunder or under the Notes or Commitment Fees hereunder as the case may be.

Section 4. Participation of the Banks

4.1 Each of the Banks severally agrees, subject to the terms and conditions hereof, to make Advancements hereunder as follows:

<u>Bank</u>	<u>Commitment</u>
CNB	The lesser of \$3,770,000 or 32.5 percent of the Commitment Amount
PNB	The lesser of \$2,842,000 or 24.5 percent of the Commitment Amount
CFB	The lesser of \$3,190,000 or 27.5 percent of the Commitment Amount

FNB

The lesser of \$1,798,000
or 15.5 percent of the
Commitment Amount

4.2 The Advancements of the Banks shall be in an aggregate principal amount of \$ _____. Each Bank shall forward the amount of its Advancement to the Agent at the main office of the Agent in immediately available funds in Columbus, Ohio, no later than ten o'clock A.M., Columbus time on _____, 1978.

4.3 Upon the occurrence of any Event of Default, each Bank shall have the right to setoff against all obligations of Borrowers to such Bank hereunder and under the Notes, whether matured or unmatured, all amounts owing to Borrowers or any of their Subsidiaries by such Bank, whether or not then due and payable and all other funds or property of Borrowers or any of their Subsidiaries on deposit with or otherwise held or in the custody of such Bank for the beneficial account of Borrowers or any of their Subsidiaries. Each Bank agrees that all amounts realized by setoff under this paragraph shall be applied first to indebtedness under any agreement(s) then in effect to which the Banks (or Substitute Banks) are parties. Each Bank agrees that if it shall, through the exercise of a right of banker's lien, setoff or counterclaim against Borrowers and their Subsidiaries, obtain payment in respect of one or more of the Notes as a result of which the unpaid portion of the outstanding Advance-

ments made by it is proportionately less than the unpaid portion of the outstanding Advancements made by any other Bank or Banks, (i) it shall be deemed to have simultaneously purchased from such other Bank or Banks a participation in the Notes so that the aggregate unpaid principal amount of all Notes and participations in Notes by each Bank shall be the same proportion of the aggregate unpaid principal amount of all Notes then outstanding as the principal amount of such Notes held by it prior to such exercise of banker's lien, setoff or counterclaim was to the principal amount of all Notes outstanding prior to such exercise of banker's lien, setoff or counterclaim and (ii) such other adjustments shall be made from time to time as shall be equitable to insure that all the Banks share such payments in proportion to their respective Advancements. The Borrowers expressly consent to the foregoing arrangement and agree that any Bank holding a participation in a Note deemed to have been so purchased may exercise any and all rights of banker's lien, setoff or counterclaim with respect to any and all moneys owing by Borrowers or any of their Subsidiaries to such Bank as fully as if such Bank held a Note in the amount of such participation.

4.4 Borrowers, with respect to any Bank (the "Terminated Bank"), may, upon three business days prior notice, terminate the entire commitment of the Terminated Bank and prepay the Notes payable to the Terminated Bank,

provided that (1) Borrowers, prior to the time of termination and prepayment, have arranged for the commitment of the Terminated Bank to be taken over by a bank (the "Substitute Bank") acceptable to the Agent, (ii) at the time of termination and prepayment, the Substitute Bank must become a party to this Agreement by consenting in writing thereto, in form acceptable to the Agent and (iii) at the time of termination and prepayment, Borrowers must prepay the unpaid principal amount of, and any accrued interest on, the Notes and any Commitment Fees hereunder accrued to the Terminated Bank and must execute and deliver to the Substitute Bank such Notes and other instruments as the Agent may request setting out the same terms, conditions and principal amounts as set forth herein.

The Banks hereby consent and agree to any such Substitute Bank becoming a party to this Agreement and hereby agree to the release of any such Terminated Bank from all obligations under this Agreement, provided such Substitute Bank agrees in writing in a form satisfactory to the Agent to assume all the liabilities and obligations of the Terminated Bank pursuant to this Agreement.

Upon becoming a party of this Agreement and upon the termination of the Commitment of the Terminated Bank, the Substitute Bank shall become and the Terminated Bank shall cease to be a Bank (as defined herein). Simultaneously therewith, or subsequent thereto, the Terminated Bank shall

execute such documents of assignment of its interest hereunder and in the Collateral as the Agent and the Substituted Bank may request.

4.5 The Notes hereunder are issued in part replacement of existing notes evidencing the CNB Indebtedness. Simultaneously with the first Advancement hereunder, CNB will assign to the Agent, for the ratable benefit of the Banks hereunder, the CNB Indebtedness and the security interests therefor then held by CNB, such assignment to be in form satisfactory to the Agent and to each of the Banks.

Section 5. Conditions of Borrowing

In addition to any other terms and conditions hereof, Banks' obligation to make any Advancement hereunder shall be conditioned upon and subject to the following:

5.1 Prior to the first Advancement hereunder, Coal Co. and Sales Co. shall furnish to Banks the following:

- (a) The Notes duly and completely executed by Coal Co. and Sales Co.; and
- (b) The Equipment Security Agreement and Mortgage duly and completely executed, together with the Perfection Documents, in form satisfactory to Banks, necessary to create and perfect first and best security interests in all of the Collateral; and
- (c) Such opinions of counsel as are required by

the Agreements; and

- (d) The favorable opinion of Messrs. Porter, Wright, Morris and Arthur, counsel for Borrowers ("Counsel"), addressed to each of the Banks and the Agent, dated the date of this Agreement and in form and substance satisfactory to each such addressee and to its counsel, as to matters required by the Agreements and, in addition, in the form of Exhibit "D" hereto;
- (e) A signed copy of certificates of the Secretary of or an Assistant Secretary of each of Borrowers (which shall be dated as of the date of this Agreement) which shall certify the names of the officers of each of Borrowers authorized to sign the Agreements, the Notes and the other documents or certificates to be delivered pursuant to this Agreement by Borrowers or any of their officers, together with the true signatures of such officers. Each Bank and the Agent may conclusively rely upon such certificates until it shall receive a further certificate of the Secretary or an Assistant Secretary of that Borrower cancelling or amending the prior certificate and submitting the signatures of the officers named in such further certificate.

5.2 At any time until the Indebtedness is satisfied in full, Borrowers shall deliver to the Banks such additional certifications, opinions, Perfection Documents and other items as are required by the Agreements.

Section 6. Warranties

In borrowing hereunder, Borrowers represent and warrant to Bank, which representations and warranties will survive the execution and delivery of the Agreements and the Notes, that (except that the warranties and representations of paragraphs 6.4 through 6.10, inclusive, may contain minor inconsistencies, which, either in any case or in the aggregate, do not and will not involve the actuality or possibility of materially or adversely affecting the business, operations, affairs or condition of Borrowers or the ability of Borrowers to enter into or perform under this Agreement):

6.1 Each Borrower is a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation, and has all requisite corporate power and authority to own and operate its properties, to carry on its business as now conducted and to enter into and perform this Agreement, including (without limitation) the execution and delivery of the Notes and the Agreements.

6.2 Each Borrower and any Subsidiaries are duly qualified or licensed and in good standing as foreign corporations duly authorized to do business in each jurisdiction in which the character of the properties owned or leased or the

nature of the activities conducted makes such qualification or licensing necessary.

6.3 The execution, delivery and performance by Borrowers of the Agreements and the Notes have been duly authorized by all necessary corporate action. The Agreements and the Notes have been duly executed and delivered by Borrowers. The Agreements and the Notes constitute legal, valid and binding obligations of Borrowers, and are enforceable against Borrowers in accordance with their terms.

6.4 Borrowers have good and marketable title to all of their respective real properties reflected on the most recent Financial Statements of Borrowers furnished to the Banks, subject to any mortgage, pledge, lien, security interest, lease, charge or encumbrance reflected therein or otherwise disclosed to Banks in writing at the date hereof. With respect to Borrowers' leasehold interests in coal minerals: Borrowers own, free of all liens, mortgages, and other encumbrances, the leasehold interests in all coal minerals the subject of existing mining operations of Borrowers; such leasehold interests are valid, subsisting and in full force and effect; Borrowers enjoy peaceful and undisturbed possession under all leases under which they operate; and as of this date there are no defaults in the payment of the royalties required under any such leasehold interest, there have been no material defaults by Borrowers under any of the other terms and provisions of any such leaseholds, and to the knowledge of Borrowers no

event has occurred which with the giving of notice or the passage of time, or both, could result in a default under any such leasehold.

6.5 There is no action, proceeding or investigation pending or threatened which questions the validity of the Agreements or the Notes or any action taken or to be taken pursuant hereto or thereto, or which might result, either in any case or in the aggregate, in any material and adverse change in the business, operations, affairs or conditions of Borrowers or their respective properties and assets taken as a whole or in any material liability on the part of Borrowers.

6.6 Neither of Borrowers is in violation of any requirement of any applicable environmental act or law, including the Federal Surface Mining and Reclamation Act, as amended, or any occupational safety and health act, including the Federal Coal Mine Health and Safety Act, as amended, or any standard, rule or order promulgated pursuant thereto or any regulation prescribed pursuant thereto.

6.7 Borrowers are in compliance with all laws applicable to their businesses, and, without limitation, have obtained complying coverage under and are otherwise in compliance with the Federal Social Security Act, as amended, Title IV of the Federal Coal Mine, Health and Safety Act, as amended, the Federal Surface and Mining Reclamation Act, as amended, workers' compensation laws and all other applicable similar, supplementary or complementary state or federal laws, regulations, requirements or guidelines.

6.8 Neither of Borrowers is in violation of or in default under any provision of: its charter or articles or certificate of incorporation, by-laws or code of regulations (each as amended to date); any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect and having applicability to Borrowers, or any indenture or loan, credit or other agreement, lease or instrument to which Borrowers or either of them is a party or by which their or its properties or assets is bound or encumbered. The execution, delivery and performance of the Agreements and the Notes will not result in any such violation of or be in conflict with or constitute a default under any such provision, nor result in the creation of any mortgage, lien, charge or encumbrance upon any of the properties or assets of Borrowers or either of them or permit the acceleration of any indebtedness of Borrowers or either of them pursuant to any such provision. There is no such provision which materially and adversely affects or in the future may (so far as can now be foreseen by Borrowers) materially and adversely affects the businesses, operations, affairs or condition of Borrowers.

6.9 The KUC Agreement and the Agreements are valid and enforceable by Borrowers (assuming their due performance thereof) against all other parties thereto in accordance with the terms thereof and Borrowers are not in default thereunder.

6.10 Borrowers own or possess all the patents, trademarks, service marks, trade names, copyrights and licenses, and rights in respect of the foregoing, necessary for the conduct of their respective businesses as now conducted, without any known conflict with the rights of others.

Section 7. Affirmative Covenants

Until this Loan Agreement is terminated and all the Indebtedness of Borrowers has been paid and satisfied:

7.1 Borrowers shall furnish to the Agent and each Bank, within 30 days after the close of each month of each fiscal year, a consolidating and consolidated balance sheet of Coal Co. and all Subsidiaries as of the close of such period and a consolidating and consolidated operating statement and reconciliation of surplus of Coal Co. and all Subsidiaries for such period, all prepared in accordance with generally accepted accounting principles applied on a consistent basis and certified by the Treasurers of Coal Co. and Sales Co.;

7.2 Borrowers shall furnish to the Agent and each Bank, within 90 days after the close of each fiscal year, a complete consolidated annual audit report, including a consolidating balance sheet of Coal Co. and all Subsidiaries as of the close of such fiscal year, and consolidating operating statements and recapitulations of surplus of Coal Co. and all Subsidiaries for such fiscal year, which audit shall have been prepared in accordance with generally accepted accounting principles applied on a consistent basis and certified in

content satisfactory to the Agent by independent certified public accountants of recognized standing acceptable to the Agent;

7.3 The annual audit report required by Paragraph 7.2 will be accompanied by a certificate prepared by the Coal Co.'s and Sales Co.'s independent certified public accountants stating that except as disclosed in the certificate, they have no knowledge of any Event of Default or event which with the lapse of time or notice or both would become an event of default hereunder;

7.4 The monthly financial statements required by paragraph 7.1 shall be accompanied by certificates of the Chief Executive Officers of Coal Co. and Sales Co. stating that except as disclosed in the certificate they have no knowledge of any event of default or event which with the lapse of time or notice or both would become an event of default hereunder;

7.5 Borrowers shall at all times

- (a) Maintain insurance upon all their property and against liability of such character and amounts as is maintained by Coal Co. and Sales Co. at the date hereof; and
- (b) Furnish annually to the Agent and each Bank, and otherwise upon the request of the Agent, comprehensive statements of their insurance coverage; and

(c) Furnish to the Agent and each Bank insurance required by the Agreements;

7.6 Upon request of the Agent or any Bank, Borrowers shall make available for inspection to duly authorized representatives of any Bank any of their books and records and shall furnish to the Agent and such Bank any information regarding their business affairs and financial condition within a reasonable time after written request therefor and the Agent, on its own initiative or at the request of any Bank, shall, at any time, have the right, but not the duty, to make direct verification with or notify any person in or under contract or agreement with, and any debtor or obligor of Borrowers, of any fact and, subsequent to the occurrence of an Event of Default, to demand and receive payment directly to the Agent or the Banks for any account or other receivable due Borrowers;

7.7 Borrowers shall promptly pay and discharge all taxes and assessments levied and assessed or imposed upon their respective property (including the Collateral) or upon their respective income as well as all claims which, if unpaid, might by law become a lien or charge upon their property; however, nothing herein contained shall require Borrowers to pay any such taxes, assessments or claims so long as Borrowers in good faith contest the validity and stay the execution and enforcement thereof, and Borrowers shall forthwith notify the Banks of any such good faith contest;

7.8 The Agent shall be the primary depository and principal bank of account of Coal Co. and Sales Co.

7.9 Borrowers will at any time upon the written request of the Banks execute and deliver to the Banks such of the Perfecting Documents as are necessary in the Agent's or any Bank's opinion, such Documents to be in form and substance satisfactory to the Agent or any Bank; and pay all recording costs, fees and taxes in connection therewith;

7.10 Mr. Harry LaViers, Jr., shall continue to be Coal Co.'s Chief Executive Officer and Mr. Keith F. Merrick shall continue to be Sales Co.'s Chief Executive Officer;

7.11 Borrowers will maintain and keep in effect their respective corporate existence and engage primarily in the business(es) in which they are now engaged;

7.12 Borrowers will comply, in all substantial respects, with all statutes, laws, ordinances and governmental rules, regulations and orders to which they are subject or which are applicable to their businesses, properties and assets, including, without limitation:

- (a) All provisions of the Employee Retirement Income Security Act of 1974 and the rules and regulations promulgated thereunder, which, if violated, might result in a lien or charge upon any property of Borrowers;
- (b) The Federal Occupational Safety and Health Act, as amended, the Federal Coal Mine Safety

- and Health Act, as amended, and the rules and regulations promulgated thereunder; and
- (c) Applicable statutes or governmental rules, regulations, orders and restrictions relating to environmental standards or controls;
 - (d) However, nothing provided in this paragraph 7.12 shall require compliance with any law, statute or governmental rule, regulation or order if the validity of such law, statute, rule, regulation or order, as applied to Borrowers, is being contested in good faith and by appropriate proceedings promptly initiated and diligently conducted, the Agent is given prompt notice of such contest, and the business, operations, affairs or condition of Borrowers or the ability of Borrowers to perform under this Agreement is not materially or adversely affected.

7.13 Borrowers will comply with all agreements, contracts, undertakings and obligations of any kind or nature which, if breached or violated, could result in a lien or charge upon any property of Borrowers which would materially and adversely affect the business, operations, affairs or condition of Borrowers or impair the ability of Borrowers to perform their obligations hereunder;

7.14 Borrowers will report immediately any fact or event which does or could with the lapse of time make incorrect any representation or warranty hereunder or become an event of default or impair Borrowers' ability to perform hereunder.

7.15 To secure all the Indebtedness, Borrowers grant to the Agent and to the Banks a continuing security interest in all the Collateral, whenever acquired, including that recited in all Agreements and herein.

Section 8. Negative Covenants

Until this Loan Agreement is terminated and all Indebtedness of Coal Co. and Sales Co. to the Banks has been paid, unless each of the Banks shall have otherwise agreed in writing:

8.1 Borrowers will not

(a) Create, incur, assume, or suffer to exist any mortgage, pledge, encumbrance, security interest, lien or charge of any kind upon any of their property or assets, whether now owned or hereafter acquired, except to Banks and except:

- (1) liens for taxes not yet due or which are being contested in good faith by appropriate proceedings and Banks shall immediately be notified of such contest;
- (2) other liens, charges and encumbrances incidental to the conduct of its business and securing borrowed money or the

purchase price of property acquired after the date hereof, provided, however, that such liens, charges or encumbrances will not exceed \$150,000 in any one instance or \$450,000 in the aggregate outstanding at any time;

- (3) the existing mortgage on the coal preparation plant located at Irvine, Kentucky, securing indebtedness payable to David H. Swanson and Ruth K. Swanson in the approximate outstanding principal balance of \$2,000,000;
 - (4) the indebtedness represented by the Notes, those of the Agreements between Borrowers and CNB existing prior to the date hereof, the Agreements and all attendant documents;
 - (5) royalty charges incurred in the ordinary course of the business of mining;
- (b) Create, incur, assume or suffer to exist any Funded or Current Debt except:
- (1) debt represented by the Notes issued hereunder.
 - (2) the debt referred to in paragraph 8.1(a);
 - (3) other Funded Debt as of the date of and disclosed in the most recent Financial Statements furnished to the Banks prior to the date hereof, but in any event not exceeding in the aggregate \$150,000;

- (4) unsecured Current Debt not to exceed an aggregate amount of \$400,000 outstanding at any time;
 - (5) any other unsecured indebtedness which, in the sole opinion of the Banks and counsel for the Banks, is satisfactorily subordinated to all Indebtedness owing to the Banks;
- (c) Assume, guarantee, endorse, contingently agree to purchase or otherwise become liable upon the obligation of any person, firm, corporation, or other entity, except to the extent such obligation does not exceed the amount of \$100,000 to any one such person, firm, corporation or other entity, and in the aggregate amount of \$500,000;
- (d) Merge or consolidate with any other corporation, or liquidate, or sell, lease, transfer, or otherwise dispose of all or a substantial part of their property or assets (however, it is understood by the Banks that Borrowers are in the process of expending approximately \$2,000,000 in liquid assets in 1979 for the acquisition and construction of a coal loading and transfer facility in Hancock County, Kentucky);
- (e) Acquire or purchase for holding, investment or other purpose excepting use thereof in the

normal and ordinary course of Borrowers' business(es) as now constituted the assets of any person, partnership, corporation or other entity or acquire or purchase the outstanding Securities of any corporation; however, purchase of U.S. Government Securities, prime commercial paper, and certificates of deposit of commercial banks having a net worth of not less than \$25 million may be made without limitation if such investments have a maturity of one year or less;

- (f) Create or dispose of any Subsidiaries or become a party to any partnership or joint venture unless Banks shall immediately be notified in writing of the creation of such entities and such entities shall immediately execute guarantees of all the Indebtedness and become subject to the covenants, conditions and warranties of Borrowers under this Agreement (except that the entity, if any, created in connection with the facility identified in paragraph 8.1(d) will not execute such guaranty so long as Borrowers' investment or contribution in connection therewith does not exceed \$2,000,000);

- (g) Declare or pay any cash dividend or redeem, purchase, retire, or in any manner acquire any issued and outstanding shares of their capital stock, or make any distribution of assets to their stockholders, except that, with notice to the Agent and until Banks give notice to the contrary, Coal Co. may make acquisitions of its own shares in amounts not exceeding \$300,000 in any one fiscal year and, in addition, Borrowers may declare cash dividends in monthly amounts not in excess of ten percent of after tax income for each month, provided that, at the time of any such dividend, Borrowers shall have net after tax income for the fiscal year to date;
- (h) Enter into any agreement with any bank, insurance company or other lender or investor providing for the leasing of any real or personal property which has been sold or transferred by Coal Co. or Sales Co. to such lender or investor; and

8.2 Borrowers will not

- (a) Permit the Tangible Net Worth of the Sales Co. to be less than \$4,000,000 prior to and including December 31, 1980; less than \$4,250,000 after December 31, 1980, and prior to and including December 31, 1981; or less than \$4,500,000 thereafter; or

- (b) Permit the Consolidated Tangible Net Worth of Coal Co. and all its Subsidiaries to be less than \$13,000,000 prior to and including December 31, 1979; less than \$14,000,000 after December 31, 1979, and prior to and including December 31, 1980; less than \$16,000,000 after December 31, 1980, and prior to and including December 31, 1981; less than \$18,000,000 after December 31, 1981, and prior to December 31, 1982; less than \$20,000,000 after December 31, 1982, and prior to and including December 31, 1983; less than \$22,000,000 after December 31, 1983, and prior to and including December 31, 1984; less than \$24,000,000 thereafter; or
- (c) Permit the Consolidated Current Assets of Coal Co. to be less than its Consolidated Current Liabilities prior to and including December 31, 1979; less than one and one tenth of (or 1.1 times) its Consolidated Current Liabilities after December 31, 1979, and prior to and including December 31, 1981; less than one and two tenths of (or 1.2 times) its Consolidated Current Liabilities after December 31, 1981; or
- (d) Permit the Consolidated Working Capital of Coal Co. to be less than \$2,000,000 prior to and

including December 31, 1979; less than \$2,200,000 after December 31, 1979, and prior to and including December 31, 1981; less than \$2,500,000 thereafter; or

- (e) Permit Coal Co.'s ratio of debt to Consolidated Tangible Net Worth to exceed 3.0 to 1 prior to and including December 31, 1980; 2.75 to 1 after December 31, 1980, and prior to and including December 31, 1982; 2.50 to 1 thereafter.

Section 9. Events of Default

9.1 Borrowers shall be deemed to be in default, and an Event of Default shall be deemed to have occurred, hereunder in the event that:

- (a) Coal Co. and/or Sales Co. shall fail to pay any principal or interest due under the Notes when the same shall become due; or
- (b) Any representation, covenant, or warranty made by Coal Co. and/or Sales Co. in this Loan Agreement, any of the Agreements, or any attendant documents shall prove to have been or become incorrect in any material respect; or
- (c) Coal Co. and/or Sales Co. shall fail to perform or observe any other terms, conditions, covenants, or agreements contained in this Loan Agreement, any of the Agreements, the Notes, the Perfection Documents or in any document executed in connection with any of the Indebtedness; or

(d) Coal Co. and/or Sales Co. should be in default of or under any covenant, agreement, term or condition with any one or more of the Banks, whether or not related to the Indebtedness hereunder.

9.2 In the Event of Default, any or all of the Indebtedness, with accrued interest thereon, shall become and be immediately due and payable at the option of the Banks.

9.3 In the Event of Default, Borrowers and each of them hereby irrevocably appoint the Agent their true and lawful attorney with power of substitution, for them and in their names, or in the names of Banks or otherwise, for the use and benefit of the Banks but at the cost and expense of Coal Co. and Sales Co., generally to sell, assign, transfer, pledge, compromise, institute suit on, make any agreement with respect to or otherwise deal with any of the Collateral and any assets pledged to the Banks, as fully and completely as though the Banks were the absolute owners thereof for all purposes. For the purpose of realizing their rights therein, the Banks may endorse checks in the name of Coal Co. and/or Sales Co. The powers conferred on the Agent and the Banks by this paragraph are solely to protect their own interests and shall not impose any duties upon the Agent or the Banks to exercise any such powers.

Section 10. Enforcement of Security and Remedies

10.1 In addition to the rights of the Banks and other Sections hereof and under the Uniform Commercial Code of Ohio, or any other applicable law, Borrowers hereby fully authorize and

empower the Agent and the Banks, upon the happening of any event of default under Section 9 hereof, to sell, assign, and deliver all of the security herefor, or any part thereof or any substitute therefor or any addition thereto, at any public or private sale, at the option of the Banks or any officer or anyone acting on behalf of Banks, and the Banks, their officers or agents may bid and become purchasers at any such sale.

10.2 In the Event of Default hereunder or at any time the Agent or the Banks in good faith believe that the prospect of payment or performance of the Indebtedness is impaired (the facts and circumstances giving rise to such belief continuing uncorrected for ten days subsequent to the Banks' transmission of written or telephonic or telegraphic notice thereof to either of Borrowers), then, or at any time thereafter (such default not having previously been cured), the Agent or the Banks may declare all of the Indebtedness to be immediately due and payable, without notice or demand therefor, and shall then have all remedies under the Agreements and all the remedies of a secured party under the laws of the State of Ohio, or any other applicable laws, including, without limitation, the right to take possession of the tangible items of the Collateral, and for that purpose the Agent or the Banks may require Borrowers to make the Collateral and the records thereof available to the Agent or the Banks at a place to be designated by the Agent reasonably convenient to both parties and may, so far as Borrowers can give authority

therefor, enter upon any premises on which the Collateral or any part or records thereof may be situated and remove the same therefrom, and Borrowers hereby waive and release the Agent and the Banks of and from any and all claims in connection with such removal.

10.3 The parties hereto recognize that portions of the Collateral may be widely scattered geographically, difficult of preservation and disposition, important to the continued operation of public utilities and industries and subject to complex maintenance and management. Accordingly, those parties agree that, after an Event of Default, the Agent and the Banks are to have the widest possible latitude to preserve and protect the Collateral and the Banks' security therein and agree further that, at the option of the Agent or the Banks, the Banks shall have the unqualified right to appointments of receivers for the preservation, possession, protection and disposition of all or part of the Collateral and the collection and protection for the Banks of any proceeds of use or disposition thereof and/or to do any other thing and exercise any rights or remedies which the Banks may or might, with or without judicial process, do or exercise.

10.4 To the extent permitted by applicable law, Borrowers hereby waive any rights now or hereafter conferred by statute or otherwise which may require the Agent or the Banks to sell, lease or otherwise use any Collateral in

mitigation of the Banks' damages or which may otherwise limit or modify any of the Banks' rights or remedies under this Section. However, Borrowers do not waive any right to notice hereunder, under the Agreements, or by law, and do not waive any claim or defense based upon the Banks' failure to dispose of the Collateral in a commercially reasonable manner, within the guidelines of this Section 10 and in light of all circumstances.

10.5 No right or remedy of the Agent or the Banks hereunder shall be exclusive of any other remedy herein or by law provided; each right or remedy shall be cumulative in addition to every other right or remedy and, in addition, the exercise of any remedy by the Agent or any Bank hereunder shall not of itself constitute a recognition of a default of all provisions hereof or of an intent by the Agent or that Bank to terminate all the provisions hereof. Moreover, a failure of the Agent or any Bank to insist upon strict compliance with the terms hereof or to assert any right or remedy hereunder shall not be a waiver of any default and shall not be determined to constitute a modification of the agreements of the parties hereto or the terms hereof or to establish any claim or defense.

10.6 In the event that Borrowers should fail duly and promptly to perform any of the things required to be performed hereunder, the Agent or any Bank may, at its option, immediately or at any time thereafter, perform the

same for the account of Borrowers without thereby waiving any default, and any amount paid or expenses or liability incurred by the Agent or such Bank in such performance, together with interest thereon until paid at the rate of 15 percent per annum, or the rate of interest specified in the Notes, whichever is greater, shall be payable to such Bank by Borrowers on demand and shall be and become part of the Indebtedness.

10.7 In the event that any amount due and payable to the Banks from Borrowers remains overdue for more than 15 days, Borrowers shall pay the Banks hereunder on demand and as part of the Indebtedness interest on such amount from the date payable to the date of actual payment at the rate of 15 percent per annum, or the rate of interest specified in the Notes, whichever is greater.

Section 11. The Banks and The Agent

11.1 Each Bank hereby authorizes the Agent to act on its behalf to the extent herein provided, to execute the Security Agreement and the Perfection Documents, and any amendments or substitutions thereof, and to exercise and execute such other powers as are reasonably incidental thereto, including the receipt of all payments of principal of and interest on the Notes and Commitment Fees, with full power and authority as attorney-in-fact for such Bank to institute and maintain against Borrowers actions, suits or proceedings for the collection and enforcement of the Notes

and to file such proofs of debt or other documents as may be necessary to have the claims of such Bank allowed in any proceeding relative to Borrowers or their creditors or affecting their properties and to take such other action for the protection, collection and enforcement of the Notes as the Agent may deem advisable. The Agent may take any such action in its discretion and shall take such action for the protection, collection and enforcement of the Notes as may be requested by Banks whose commitment percentages under this Agreement aggregate at least 65 percent of the total aggregate commitment to make Advancements hereunder. Any Bank may revoke the authority of the Agent set forth in this Section 11.1, effective upon actual receipt of written notice by the Agent of such revocation. Such revocation will not impair the authority of the Agent as agent for the remaining Banks or of those Banks to take any action hereunder. All expenses, including counsel fees, incurred by the Agent in taking any action hereunder shall be borne, subject to Borrower's liability therefor hereunder, by the Banks ratably in accordance with their respective commitment percentages under this Agreement, and the Banks hereby agree to reimburse the Agent for all such expenses on request.

11.2 Neither the Agent nor any of its directors, officers or employees shall be liable for any action taken or omitted in the absence of gross negligence or willful misconduct. Borrowers shall certify to the Agent the names

and signatures of their officers authorized to sign Notes, execute certificates and otherwise act in respect hereof, and the Agent may conclusively rely thereon until receipt by it of notice to the contrary. Subject to its duty to satisfy itself as to the adequacy and scope of the documents to be delivered pursuant to Section 5 hereof, the Agent shall not be under a duty to examine or pass upon the validity, effectiveness, genuineness or value of the Agreements or any other instrument or document furnished pursuant thereto or in connection therewith, and the Agent shall be entitled to assume that the same are valid, effective and genuine and what they purport to be. The Agent shall be entitled to rely upon any opinion of any counsel rated "av" by Martindale-Hubble in relation to this Agreement. The Agent may treat the payee of any Note as the holder thereof until written notice of transfer shall have been filed with it. With respect to its loans hereunder, The City National Bank & Trust Company of Columbus shall have the same rights and powers hereunder as any Bank and may exercise the same as though it were not the Agent and it and its affiliates may accept deposits from, lend money to and generally engage in any kind of business with Borrowers or any Subsidiary as if it were not the Agent.

11.3 The Banks agree to indemnify the Agent (to the extent not reimbursed by Borrowers) ratably according to the respective principal amounts of their commitments hereunder

from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed upon, incurred by or asserted against the Agent in any way relating to or arising out of the Agreement or any action taken or omitted by the Agent under the Agreement provided that no Bank shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Agent's gross negligence or willful misconduct.

11.4 If the Agent acquires actual knowledge of any Event of Default hereunder or of an event which, with the giving of notice or the lapse of time, or both, would constitute an Event of Default hereunder, the Agent shall promptly give notice thereof to the Banks and will take such action and assert such rights under the Agreements or the Notes as those Banks whose commitment percentages aggregate at least 65 percent of the total aggregate commitment to make Advancements hereunder shall direct. However, if the Banks entitled to so direct the Agent shall fail, for ten days after the giving of any such notice, to so direct the Agent, the Agent may take such action and assert such rights as it deems to be advisable in its discretion for the protection of the interests of the holders of the Notes.

11.5 Each Bank hereby represents to Borrowers, the Agent and the other Banks that the Notes are being received by each Bank as a result of making loans in the ordinary course of its commercial banking business and are not being received with a view to or for sale in connection with any distribution of the Notes, nor with any present intention of distributing or selling the Notes (excepting participations by affiliated commercial banking institutions making the representations of paragraphs 11.5 and 11.6). However, subject to any contrary requirement of law, disposition of the property of each Bank shall at all times be and remain within the control of such Bank.

11.6 Each Bank hereby represents to Borrowers, the Agent and the other Banks that it has entered into this Agreement as a result of its own independent assessment of Borrowers' credit worthiness including a review of such financial statements, reports and documents and an investigation of such facts and circumstances as such Bank has deemed appropriate; and that such Bank has not relied upon the opinions or representations of the Agent or any other Bank in making this assessment of Borrowers' credit worthiness.

Section 12. Miscellaneous

12.1 All covenants and agreements in this Agreement contained by or on behalf of any of the parties hereto shall bind and inure to the benefit of the respective successors and assigns of the parties hereto whether so expressed or not, except that neither Sales Co. nor Coal Co. shall have

the right to assign its rights hereunder or any interest herein without the prior written consent of each of the Banks.

12.2 Except as otherwise specifically provided herein, notice shall be deemed to have been properly given to Sales Co. when in writing and deposited in the United States registered or certified mail, postage prepaid and addressed to South-East Coal Sales Company, 88 East Broad Street, Columbus, Ohio 43215, whether or not the same is actually received by the Sales Co. Notice shall be deemed to have been properly given to Coal Co. when in writing deposited in the United States registered or certified mail, postage prepaid and addressed to South-East Coal Company, P.O. Box 332, Irvine, Kentucky 40336, whether or not the same is actually received by the Coal Co. Any communication to any Bank and to the Agent shall be deemed properly given if similarly mailed to its Commercial Loan Department at its particular address as stated herein, to the attention of the officer or agent executing this Agreement. Any party hereto may at any time change its address for notification purposes by mailing, as aforesaid, a notice stating the change and setting forth the new address.

12.3 No amendment, modification, termination, or waiver of any provision of this Loan Agreement, the Notes, or the Agreements and attendant documents, nor consent to any departure by Borrowers therefrom, shall in any event be

effective unless the same shall be in writing and signed by the Agent, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on Borrowers in any case shall entitle Borrowers to any other or further notice or demand in similar or other circumstances.

12.4 All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles consistently applied.

12.5 All costs or expenses, including, without limitation, legal fees, incurred in connection with the preparation, administration or enforcement of this Agreement, the Notes, the Agreements and the Perfection Documents, or any other instruments, documents, or agreements to be delivered hereunder shall be paid by Borrowers on demand. In addition, Borrowers agree to and do hereby indemnify the Banks from and hold them harmless against all such costs and expenses of any taxes, assessments or charges (not measured by or assessed upon their net income) made by any governmental authority by reason of the execution and delivery of this Agreement, the Notes, the Agreements or the Perfection Documents.

12.6 To the extent possible this Agreement shall be interpreted as consistent and cumulative with those of the Agreements between CNB and Borrowers in existence at the date hereof which may be assigned to the Agent hereunder by

CNB, in the event of direct conflict, the provisions of this Agreement will prevail.

12.7 The titles to the various sections of this Agreement are solely for convenience and are not a part of the Agreement for purposes of interpreting the provisions hereof.

12.8 Unless otherwise specified, the terms "herein," "hereunder," "hereto," "herewith" and words of similar import refer to this entire Agreement; the singular includes the plural and conversely.

12.9 This Agreement, the Notes, the Agreements and the Perfection Documents, or any other instruments, documents, or agreements to be delivered hereunder, are being executed and delivered and are intended to be performed in the State of Ohio. The parties hereto agree that the law of the State of Ohio shall govern their rights and duties hereunder, excepting applicable federal law and except only to the extent precluded by other states' law of mandatory application. If any provision hereof or of the Agreements is or becomes invalid or unenforceable under any law of mandatory application, it is the intent of the parties hereto that such provision will be deemed omitted herefrom or therefrom, the remaining provisions to remain in full force and effect.

12.10 As a specifically bargained inducement for the Banks to extend credit giving rise to the Indebtedness, all parties hereto agree that ANY ACTION, SUIT OR PROCEEDING

IN RESPECT OF OR ARISING FROM OR OUT OF THIS AGREEMENT, ITS MAKING, VALIDITY OR PERFORMANCE, SHALL, AT THE SOLE OPTION OF THE AGENT, BE PROSECUTED AS TO ALL PARTIES AND THEIR SUCCESSORS AND ASSIGNS AT COLUMBUS, OHIO. EACH PARTY HERETO CONSENTS TO AND SUBMITS TO THE EXERCISE OF JURISDICTION OVER ITS PERSON BY ANY COURT SITUATED AT COLUMBUS, OHIO, AND HAVING JURISDICTION OVER THE SUBJECT MATTER. Sales Co. and Coal Co. each hereby irrevocably appoint and designate Louis A. Nobile, whose address is 100 East Broad Street, Columbus, Ohio 43215, or any other person whom the Agent, after giving Sales Co. and Coal Co. five (5) days' written notice thereof may appoint, as its true and lawful attorney-in-fact and duly authorize agent for service of legal process and agrees that service of such process upon such party shall constitute personal service of such process upon each of them. Such attorney-in-fact, within five (5) days after receipt of such process, shall forward the same, by certified or registered mail, together with all papers affixed thereto, to Sales Co. or Coal Co., as the case may be, at its address as set forth herein.

12.11 This written Agreement is exclusive as to its subject matter and no inconsistent oral agreement shall be binding.

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be a duplicate original, but all of which, taken together, shall constitute a single instrument.

IN WITNESS WHEREOF, the parties hereto have caused
this Agreement to be duly executed by their respective duly
authorized officers as of the ____ day of _____, 1978.

THE CITY NATIONAL BANK & TRUST
COMPANY OF COLUMBUS, Columbus, Ohio

By: _____
Philip C. Parker
Assistant Vice President

A G E N T

THE CITY NATIONAL BANK & TRUST
COMPANY OF COLUMBUS

By: _____
Philip C. Parker
Assistant Vice President

PITTSBURGH NATIONAL BANK

By: _____

CITIZENS FIDELITY BANK AND TRUST
COMPANY

By: _____

THE FIRST NATIONAL BANK OF
LOUISVILLE

By: _____

L E N D E R S

SOUTH-EAST COAL COMPANY

By: _____

Its: _____

SOUTH-EAST COAL SALES COMPA

By: _____

Its: _____

B O R R O W E R S

Schedule 1

LOAN AGREEMENT

THIS AGREEMENT, dated 11/14 /, 1975, by and between SOUTH-EAST COAL SALES COMPANY, a corporation organized and existing under the laws of the State of Kentucky, located at 88 East Broad Street, Columbus, Ohio, (hereinafter called "Sales Co."), SOUTH-EAST COAL COMPANY, a corporation organized and existing under the laws of the State of Kentucky, located at Irvine, Kentucky, (hereinafter called "Coal Co.") and THE CITY NATIONAL BANK & TRUST COMPANY OF COLUMBUS, Columbus, Ohio (hereinafter called "Bank").

W I T N E S S E T H:

WHEREAS, Coal Co. is the owner of 4992 of the 5000 issued and outstanding shares of capital stock of Sales Co.; and

WHEREAS, Sales Co. and Coal Co. desire jointly and severally to obtain a line of credit in an amount not to exceed Ten Million Dollars (\$10,000,000.00); and

WHEREAS, Bank is willing to extend such credit upon the terms and conditions hereafter set forth:

NOW THEREFORE, the Parties agree as follows:

Section 1. Line of Credit

1.1. Subject to the terms and conditions of this Loan Agreement, Bank agrees to lend to Sales Co. and Coal Co., jointly and severally, up to 80% of those outstanding accounts receivable of Sales Co., not over thirty (30) days past due, as are acceptable to Bank, in its sole discretion. The aggregate unpaid principal amount of loans from Bank to Sales Co. and Coal Co. at any one time outstanding hereunder shall not exceed Ten Million Dollars (\$10,000,000.00), or 80% of said accounts

receivable, whichever is less.

1.2. In the case of each borrowing, Sales Co. and Coal Co. shall deliver to Bank a demand Promissory Note, executed jointly and severally by Sales Co. and the Coal Co., in the form of Exhibit "A" attached heret (hereinafter collectively called the "Notes"), payable to the order of the Bank with the blanks appropriately filled in.

1.3. Interest shall be payable monthly, on the last day of each calendar month, computed on the daily unpaid balances of all Notes outstanding at any time during that month, on the basis of a 360 day year, at a fluctuating rate equivalent to one per cent (1%) per annum in excess of the prime rate of the Bank for ninety day loans to responsible and substantial commercial borrowers in effect from time to time. In computing the unpaid balances of the Notes there shall be deducted from the face amount of the Notes all payments received and collected by Bank, such payments to be applied firstly to the payment of any interest due and secondly to the payment of the unpaid principal balances of the Notes in the order of their dates beginning with those bearing the earliest date.

1.4. Sales Co. and Coal Co. shall make all payments on account of principal of, or interest on, the Notes provided by this Agreement, to Bank as payee at its Main Office, 100 East Broad Street, Columbus, Ohio, as such payments shall become due in accordance with the terms hereof or of the Notes and any Security Agreements executed and delivered hereunder.

1.5. Any other terms or conditions of this Loan Agreement, the Notes, or any Security Agreements notwithstanding, either Sales Co. and Coal Co. or Bank may terminate this Loan Agreement at any time upon

giving the other written notice thereof by registered or certified mail. Termination of this Loan Agreement shall be deemed effective upon the depositing of such written notice in the United States Mail. Such termination shall not affect the rights, liabilities, and obligations of the parties with respect to loans made prior to the effective date of termination. Until such time of termination, as consideration for the credit hereby extended, Sales Co. and Coal Co. shall pay to Bank commitment commission on the daily average unused portion of this commitment at the rate of one-quarter of one percent ($1/4\%$) per annum starting with the date of this Agreement, said commission to be computed on a 360 day year basis and to be payable monthly, on the last day of each calendar month, commencing on the last day of May, 1975.

Section 2. Conditions of Borrowing

In addition to the other terms and conditions of this Loan Agreement the obligation of Bank to make loans to Sales Co. and Coal Co., jointly and severally, as provided for hereunder, shall be subject to the following conditions:

2.1. Prior to the initial borrowing hereunder, Sales Co. and Coal Co. shall furnish to Bank the following:

- A. Duly executed Security Agreements, in the form of Exhibits "B" and "C" attached hereto, (hereinafter called "Security Agreements"), and Financing Statements, in a form satisfactory to Bank, creating security interests constituting a first lien on all receivables of Sales Co. and Coal Co. and securing the payment of all loans and advances made pursuant to this Loan Agreement or the Notes issued hereunder.

- B. Certified copies of the resolutions of the Boards of each of Sales Co. and Coal Co. authorizing the execution of this Loan Agreement and any Notes, Security Agreements or Financing Statements to be issued hereunder, and any other matters contemplated hereby;
- C. Opinions satisfactory to Bank by Counsel acceptable to Bank as to the matters referred to in Section 3.1 hereof.

2.2. At the time of each borrowing, Sales Co. and Coal Co. shall deliver to Bank an executed Accounts Receivable and Loan Summary in the form of Exhibit "D" attached hereto, as said form may be changed by Bank from time to time, and shall be in compliance with all of the provisions, warranties, terms, and conditions contained in this Agreement with which they are to comply, and there shall exist no default under this Loan Agreement, the Notes, or the Security Agreements, and no event shall exist or shall have occurred which with the lapse of time or notice or both would constitute such an event of default thereunder.

2.3. Sales Co. and Coal Co. each hereby authorize Bank, in its sole discretion, to apply all or any portion of the balances of any account maintained by either of them with the Bank to the payment or reduction, in whole or in part, of any or all principal or interest then due by Sales Co. and Coal Co. to the Bank under the Notes.

Section 3. Warranties

In borrowing hereunder, the Sales Co. and Coal Co., jointly and severally, represent and warrant to Bank, which representations and

warranties will survive the execution and delivery of this Agreement and the Notes, that:

3.1. Sales Co. and Coal Co. are duly organized and existing corporations under the laws of the State of Kentucky and are qualified to do business in all states where such qualification is necessary; the execution hereof has been duly authorized by appropriate corporate action; there is no prohibition, either in law, in their articles of incorporation or by-laws or in any agreements to which they are a party, which in any way prohibits or would be violated by the execution and carrying out of this Loan Agreement in any respect; this Loan Agreement has been duly executed and is the valid and binding obligation of Sales Co. and Coal Co. and, the Notes and Security Agreements issued and delivered to Bank pursuant to the provisions hereof will also be valid and binding obligations of Sales Co. and Coal Co. according to their terms; and the executed Security Agreements and Financing Statements when properly filed will at all times, until the Notes are paid in full, constitute a duly perfected, legal, valid, and enforceable first priority security interest in and to the receivables of Sales Co. and Coal Co., and all action required to perfect fully the Bank's first priority security interest in and to the receivables of Sales Co. and Coal Co. has been taken and completed.

3.2. Sales Co. and Coal Co. have furnished to Bank true and correct balance sheets and profit and loss statements as of December 31, 1974, which fairly reflect the financial condition of Sales Co. and Coal Co.

3.3. There are no actions or litigations pending or, to the

knowledge of Sales Co. or Coal Co., threatened against Sales Co. or Coal Co. in any court or governmental instrumentality or agency, which might result in any material adverse change in the business, financial condition, or property of Sales Co. or Coal Co.

3.4. Sales Co. and Coal Co. have made no investments in, advances to, or guarantees of the obligation of any company, individual, or other entity except as disclosed in the above balance sheets.

3.5. Sales Co. and Coal Co. have no liabilities, direct or contingent except as disclosed in the above balance sheets.

3.6. Sales Co. and Coal Co. have paid on a current basis all taxes of any kind or nature.

Section 4. Affirmative Covenants

Until this Loan Agreement is terminated and all indebtedness of Sales Co. and Coal Co. to Bank has been paid:

4.1. Sales Co. and Coal Co. shall furnish to Bank within thirty (30) days after the close of each month of each fiscal year, a consolidating and consolidated balance sheet of Sales Co. and Coal Co. as of the close of such period and a consolidating and consolidated operating statement and reconciliation of surplus of Coal Co. and Sales Co. for such period, all prepared in accordance with generally accepted accounting principles applied on a consistent basis and certified by the President or Treasurer of Coal Co. and Sales Co.

4.2. Sales Co. and Coal Co. shall furnish to Bank within ninety (90) days after the close of each fiscal year a complete consolidated annual audit report, including a consolidating balance sheet of Sales Co. and Coal Co. as of the close of such fiscal year and a consolidating

operating statement and reconciliation of surplus of Sales Co. and Coal Co. for such fiscal year, which audit shall have been prepared in accordance with generally accepted accounting principles applied on a consistent basis and certified in form satisfactory to Bank by independent certified public accountants of recognized standing acceptable to Bank.

4.3. The annual audit report called for by Paragraph 4.2 above must be accompanied by a certificate prepared by the Sales Co.'s and Coal Co. independent certified public accountants stating that except as disclosed in the certificate they have no knowledge of any event of default or event which with the lapse of time or notice or both would become an Event of Default under Section 6 hereof.

4.4. The monthly financial statements called for by Paragraph 4.1 above shall be accompanied by a certificate of the Chief Executive Officer of the Sales Co. and Coal Co. stating that except as disclosed in the certificate he has no knowledge of any event of default or event which with the lapse of time or notice or both would become an event of default under Section 6 hereof.

4.5. Sales Co. and Coal Co. shall at all times:

- A. Maintain insurance upon their property of such character and amounts as is usually maintained by Sales Co. and Coal Co.; and
- B. Furnish to Bank, upon request, a statement of their insurance coverage; and
- C. Furnish to Bank other or additional insurance promptly upon request of Bank.

4.6. Upon request of Bank, Sales Co. and Coal Co. shall make available for inspection to duly authorized representatives of Bank

any of their books and records and shall furnish to Bank any information regarding their business affairs and financial condition within a reasonable time after receipt of written request therefor. Bank shall, at any time, have the right, but not the duty, to make direct verification with or notify any account debtor or obligor on any of the Receivables of Sales Co. and Coal Co. and to demand and receive payment thereof directly to Bank.

4.7. Sales Co. and Coal Co. shall promptly pay and discharge all taxes and assessments levied and assessed or imposed upon their respective property or upon their respective income as well as all claims which, if unpaid, might by law become a lien or charge upon their property; provided, however, that nothing herein contained shall require the Sales Co. or Coal Co. to pay any such taxes, assessments or claims so long as the Sales Co. or Coal Co. shall in good faith contest the validity and stay the execution and enforcement thereof, and Sales Co. or Coal Co. shall forthwith notify Bank of any such good faith contest.

4.8. Bank shall be the primary depository and principal bank of account of Sales Co. and Coal Co.

4.9. Sales Co. shall furnish to Bank on a weekly basis an aged list of all accounts receivable of Sales Co. setting forth that portion of such accounts receivable which are not due, which are past due one (1) to thirty (30) days, and which are past due in excess of thirty (30) days.

4.10. Whenever Sales Co. shall receive any payment of any account receivable, it shall hold such payment in trust for Bank and shall forthwith deliver the same to Bank without comingling with any funds belonging to Sales Co. or Coal Co., unless otherwise agreed to

by Bank. Prior to demand by Bank, Sales Co. and Coal Co. shall promptly readjust and repay the Notes outstanding hereunder as accounts receivable become more than thirty (30) days past due, or become doubtful, or become subject to adjustment, so that the aggregate principal balance of all Notes outstanding hereunder shall at no time be in excess of 80% of those outstanding accounts receivable of Sales Co. which are not more than thirty (30) days past due, not doubtful, or not subject to adjustment, and as are acceptable to Bank.

4.11. Sales Co. and Coal Co. shall immediately notify Bank in the event of the refusal by an account debtor to accept or pay any account receivable when due, or of any overdue account receivable, or the return of or offer to return any of the goods or property which are the subject of any account receivable, and of the bankruptcy, insolvency, or financial embarrassment of any account debtor, and of any claim asserted for credit, allowance, adjustment, setoff or counterclaim where the amounts involved exceed Twenty Five Thousand Dollars (\$25,000.00).

4.12. Sales Co. and Coal Co. agree at all times to keep accurate and complete records and accounts in accordance with sound bookkeeping practices.

4.13. Sales Co. and Coal Co. will at any time upon the written request of Bank, execute and deliver to Bank whatever instruments or agreements as are necessary in Bank's opinion to provide Bank with a perfected lien or liens on any or all Sales Co.'s and Coal Co.'s assets. Said liens shall secure all of the liabilities and obligations of Sales and Coal Co. under this Agreement and the Notes issued hereunder and such instruments or agreements shall be in form and substance satisfactory to

Bank.

4.14. Mr. David H. Swanson shall continue to be the Sales Co.'s Chairman of the Board of Directors and Mr. Keith Merrick shall continue to be the Sales Co.'s President. Mr. Harry LaViers, Jr. shall continue to be the Coal Co.'s Chief Executive Officer.

Section 5. Negative Covenants.

Until this Loan Agreement is terminated and all indebtedness of Sales Co. and Coal Co. to Bank has been paid, unless the Bank shall have otherwise agreed in writing:

5.1. Neither the Sales Co. nor the Coal Co. will:

A. Create, incur, assume, or suffer to exist any mortgage, pledge, encumbrance, security interest, lien or charge of any kind upon any of their property or assets, whether now owned or hereafter acquired, except: (1) liens for taxes not yet due or which are being contested in good faith by appropriate proceedings and Bank shall immediately be notified of such contest; (2) other liens, charges and encumbrances incidental to the conduct of its business and not securing borrowed money or the purchase price of property; (3) the existing mortgage on the coal preparation plant located at Irvine, Kentucky, securing indebtedness payable to David H. Swanson and Ruth K. Swanson in the approximate amount of Two Million Six Hundred Forty Nine Thousand Twenty Four and no/100 Dollars (\$2,649,024.00), the existing mortgage on

certain real estate in Kentucky securing indebtedness payable to C. T. Williams in the approximate amount of Sixty Five Thousand and no/100 Dollars (\$65,000.00), and the existing lien on certain equipment securing indebtedness payable to The Peoples Bank of Hazard, Kentucky, in the approximate amount of Fourteen Thousand Seven Hundred Thirty and no/100 Dollars (\$14,730.00).

- B. Create, incur, assume or suffer to exist any funded or current debt except: (1) debt represented by Notes issued hereunder; (2) that debt referred to in Sec. 5.1.A. above; (3) the existing unsecured funded debt in the approximate aggregate amount of Nine Hundred Eighty Eight Thousand Eight Hundred and no/100 Dollars (\$988,800.00); (4) unsecured current debt not to exceed an aggregate amount of Four Hundred Thousand and no/100 Dollars (\$400,000.00) outstanding from time to time; (5) any other unsecured indebtedness which, in the sole opinion of Counsel for Bank, is satisfactorily subordinated to all indebtedness owing Bank.
- C. Assume, guarantee, endorse, contingently agree to purchase or otherwise become liable upon the obligation of any person, firm, corporation, or other entity, except to the extent such obligation does not exceed the amount of Twenty Five Thousand and no/100 Dollars (\$25,000.00) to any one such person, firm, corporation,

or other entity, and in the aggregate amount of
Two Hundred Fifty Thousand and no/100 Dollars
(\$250,000.00);

- D. Merge or consolidate with any other corporation, or liquidate, or sell, lease, transfer, or otherwise dispose of all or a substantial part of their property or assets;
- E. Acquire or purchase the assets of any person, partnership, corporation or other entity or acquire or purchase the outstanding securities of any corporation; provided, however, that purchase of U. S. Government securities, prime commercial paper, and certificates of deposit of commercial banks having a net worth of not less than \$25 million may be made without limitation if such investments have a maturity of one year or less;
- F. Create any subsidiaries unless Bank shall immediately be notified in writing of the creation of such subsidiaries and such subsidiaries shall immediately execute guarantees of all indebtedness outstanding or to be outstanding hereunder;
- G. Declare or pay any cash dividend or redeem, purchase, retire, or in any manner acquire any issued and outstanding shares of their capital stock, or make any distribution of assets to their stockholders.
- H. Enter into any agreement with any bank, insurance company or other lender or investor providing for the leasing of any real or personal property which has been or is to be sold or transferred by Sales Co. or Coal Co. to such

lender or investor.

5.2. Coal Co. and Sales Co. will not:

- A. Permit the tangible net worth of the Sales Co. to be less than an amount equal to Two Million Five Hundred Thousand Dollars (\$2,500,000.00) prior to and including December 31, 1975; less than an amount equal to Two Million Seven Hundred Fifty Thousand and no/100 Dollars (\$2,750,000.00) after December 31, 1975, and prior to and including December 31, 1976; or less than an amount equal to Three Million Dollars (\$3,000,000.00) thereafter;
- B. Permit the consolidated tangible net worth of Coal Co. and all subsidiaries to be less than an amount equal to Nine Million Dollars (\$9,000,000.00) prior to and including December 31, 1975; less than an amount equal to Ten Million Dollars (\$10,000,000.00) after December 31, 1975, and prior to and including December 31, 1976; or less than an amount equal to Eleven Million Dollars (\$11,000,000.00) thereafter.

Section 6. Events of Default

- 6.1. The following shall constitute the Events of Default:
 - A. Sales Co. and/or Coal Co. shall fail to pay any principal or interest due under any of the Notes when the same shall become due; or
 - B. Any representation, covenant, or warranty made by Sales Co. and/or Coal Co. in this Loan Agreement or in the Security Agreements, shall prove to have been

incorrect in any material respect when made; or

C. Sales Co. and/or Coal Co. shall fail to perform or observe any other terms, conditions, covenants, or agreements contained in this Loan Agreement or in the Notes, or in the Security Agreements.

6.2. If any Event of Default shall occur, any or all of the Notes, with accrued interest thereon, shall become and be immediately due and payable at the option of Bank. Anything contained in this Loan Agreement or in the Security Agreements notwithstanding, Bank may demand payment of any of the Notes at any time as provided therein.

6.3. Upon the happening of any Event of Default, Sales Co. and Coal Co. hereby irrevocably appoint the Bank their true and lawful attorney, with power of substitution, for them and in their names, or in the name of the Bank or otherwise, for the use and benefit of the Bank but at the cost and expense of Sales Co. and Coal Co., generally to sell, assign, transfer, pledge, make any agreement with respect to or otherwise deal with any assets pledged to the Bank, as fully and completely as though the Bank were the absolute owner thereof for all purposes. For the purpose of realizing its rights therein, the Bank may endorse checks in the name of Sales Co. and/or Coal Co. The powers conferred on the Bank by this Section 6.3 are solely to protect its own interests and shall not impose any duties upon the Bank to exercise any such powers.

Section 7. Definitions

7.1. For the purpose of this Agreement, the following terms shall have the following meanings:

- A. "Consolidated Tangible Net Worth" shall mean the consolidated net worth of Coal Company and all subsidiaries less all consolidated intangible assets. Both consolidated tangible net worth and consolidated intangible assets shall be determined in accordance with generally accepted accounting principles applied on a consistent basis; provided, however, that consolidated tangible net worth shall include no appraisal surplus of any type or description. Intangible assets are here defined to include goodwill, patents, trademarks, franchises, licenses, excess of cost over book value of assets acquired, deferred research and development expenses, deferred operational expenses of any type or description and any other assets which, under generally accepted accounting principles would be classified as intangible assets.
- B. "Funded Debt" shall mean any obligation payable more than one (1) year from the date of the creation thereof, which under generally accepted accounting principles is shown on the balance sheet as a liability, and "Current Debt" shall mean any obligation for borrowed money (and any negotiable instruments and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money) payable on demand or within a period of one (1) year from the date of the creation thereof;

- C. "Securities" shall mean any authorized or outstanding shares of capital stock or any bonds, debentures, notes or other forms of indebtedness or equity interest of any corporation;
- D. "Subsidiary" shall mean any corporation organized under the laws of any state of the United States of America, a majority of the voting stock of which shall, at the time as of which any determination is being made, be owned by the Sales Co. or Coal Co., either directly or through subsidiaries;
- E. "Receivables" shall mean accounts, accounts receivable, contract rights, chattel paper, instruments, general intangibles, notes, drafts, acceptances, and other forms of obligations and receivables, now owned or hereafter acquired by Sales Co. and Coal Co., whether now existing or hereafter arising, and whether or not specifically assigned to Bank.

Section 8. Enforcement of Security

8.1. In addition to the rights of the Bank under other Sections hereof and under the Uniform Commercial Code of Ohio, the Sales Co. and Coal Co. hereby fully authorize and empower the Bank, upon the happening of any Event of Default under Section 6 hereof, to sell, assign, and deliver all of the security herefor, or any part thereof or any substitute therefor or any addition thereto, at any public or private sale, at the option of the Bank or any officer or anyone acting on behalf of

the Bank, and the Bank, its officers or agents may bid and become purchasers at any such sale.

Section 9. Miscellaneous

9.1. All covenants and agreements in this Agreement contained by or on behalf of any of the parties hereto shall bind and inure to the benefit of the respective successors and assigns of the parties hereto whether so expressed or not, except that neither Sales Co. nor Coal Co. shall have the right to assign their rights hereunder or any interest herein without the prior written consent of the Bank.

9.2. Notice shall be deemed to have been properly given to Sales Co. when deposited in the United States Mail, registered or certified, postage prepaid, and addressed to South-East Coal Sales Company, 88 East Broad Street, Columbus, Ohio, 43215, whether or not the same is actually received by the Sales Co. Notice shall be deemed to have been properly given to Coal Co. when deposited in the United States Mail, registered or certified, postage prepaid, and addressed to South-East Coal Company, P.O.Box 332, Irvine, Kentucky, 40336, whether or not the same is actually received by the Coal Co. Any communication to Bank shall be deemed properly given if similarly mailed to the Commercial Loan Department at its Main Office at 100 East Broad Street, Columbus, Ohio, 43215.

9.3. No delay on the part of the Bank in exercising any right, power or privilege granted hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof. The rights and remedies herein expressly specified are cumulative and not exclusive

of any other rights and remedies which the Bank would otherwise have.

9.4. No amendment, modification, termination, or waiver of any provision of this Loan Agreement, the Notes, or the Security Agreements, nor consent to any departure by Sales Co. or Coal Co. therefrom, shall in any event be effective unless the same shall be in writing and signed by the Bank, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on Sales Co. or Coal Co. in any case shall entitle Sales Co. or Coal Co. to any other or further notice or demand and in similar or other circumstances.

9.5. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles consistently applied.

9.6. All legal fees, costs or expenses, incurred in connection with either the preparation or enforcement of this Loan Agreement, the Notes, the Security Agreements, or any other instruments, documents, or agreements to be delivered hereunder shall be paid by Sales Co. and Coal Co.

9.7. This Loan Agreement, the Notes, the Security Agreements or any other instruments, documents, or agreements to be delivered hereunder, are being executed and delivered and are intended to be performed in the State of Ohio and shall be in all respects interpreted in accordance with the laws of said State.

The parties hereto have caused this Agreement to be duly

executed by their respective duly authorized officers as of the
day and year first above written.

SOUTH-EAST COAL SALES COMPANY

By: W. H. Johnson C.H.M.

By: R. K. Moore Secy

SOUTH-EAST COAL COMPANY

By: Harry L. Van J. Pres.

By: W. H. Johnson V. Pres.

THE CITY NATIONAL BANK & TRUST COMPANY
OF COLUMBUS, Columbus, Ohio

By: Philip Clarke, Loan Officer

EXHIBIT "A"

PROMISSORY NOTE

\$ _____ Columbus, Ohio, _____, 19__

ON DEMAND, for value received, the undersigned jointly and severally promise to pay to the order of THE CITY NATIONAL BANK & TRUST COMPANY OF COLUMBUS, Columbus, Ohio (hereinafter called "Bank"), at the Main Office of Bank in the City of Columbus, Ohio, the principal sum of _____ Dollars (\$ _____)

with interest on the balance from time to time remaining unpaid at a fluctuating rate equivalent to one per cent (1%) per annum in excess of the prime rate of the Bank for ninety day loans to responsible and substantial commercial borrowers in effect from time to time, which interest shall be payable monthly on the last day of each calendar month, and shall be computed on the daily unpaid balances hereof during that month, on the basis of a 360 day year.

This note is issued under the provisions of a Loan Agreement dated _____, 19__, between the undersigned and Bank. The principal and interest may become due or may be declared due and payable as provided either in this Promissory Note or in said Loan Agreement, as said Loan Agreement is now or may hereafter be amended. Anything contained herein or in said Loan Agreement notwithstanding, Bank may demand payment of this Promissory Note, with any accrued interest hereon, at any time.

This note is secured pursuant to the terms and conditions set forth in said Loan Agreement, as the same is now or may hereafter be amended, and Security Agreements on receivables of the undersigned as described in said Security Agreements.

Any and all moneys now or at any time hereafter owing to the undersigned from the holder hereof, are hereby pledged for the security of this and all other indebtedness from the undersigned to the legal holder hereof, and may be paid and applied thereon at any time such indebtedness becomes due or is declared due and payable.

When this note becomes due, and at any time thereafter, the holder may, at its option demand, sue for, collect, or make any compromise or settlement it deems desirable with reference to any collateral held hereunder. The holder shall not be bound to take any steps necessary to preserve any rights in the collateral against prior parties, which the undersigned assumes to do.

No delay or omission on the part of the holder in exercising any right hereunder shall operate as a waiver of such right or of any other right under this note. A waiver on any one occasion shall not be construed as a bar to or waiver of any such right and/or remedy on any future occasion.

The undersigned jointly and severally authorize any Attorney-at-Law to appear for both or each of the undersigned, in an action on the within note at any time after the same becomes due, as herein provide in any court of record in or of the State of Ohio, or elsewhere, to waive the issuing and service of process against both or each of the undersigned, and to confess judgment in favor of the legal holder of the within note against both or each of the undersigned, for the amount that may be due, with interest at the rate therein mentioned and costs of suit, and to waive and release all errors in said proceedings and judgments and all petitions in error, and right of appeal from the judgment rendered. After the judgments entered against both or each of the undersigned, the powers herein conferred may be exercised as to any or each of the others.

(WARNING - BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE.

SOUTH-EAST COAL SALES COMPANY

By: _____

By: _____

SOUTH-EAST COAL COMPANY

By: _____

By: _____

SECURITY AGREEMENT

THIS SECURITY AGREEMENT, dated _____, 1975 (the "Security Agreement"), from SOUTH-EAST COAL SALES COMPANY, 88 East Broad Street, Columbus, Ohio 43215, a Kentucky corporation (the "Debtor" or "Sales Co."), to THE CITY NATIONAL BANK & TRUST COMPANY OF COLUMBUS, 100 East Broad Street, Columbus, Ohio 43215, a national banking association (the "Secured Party" or the "Bank").

W I T N E S S E T H:

WHEREAS, the Secured Party has agreed to extend a line of credit to the Debtor and SOUTH-EAST COAL COMPANY, P. O. Box 332, Irvine, Kentucky 40336 ("Coal Co."), not to exceed the sum of \$10,000,000.00, pursuant to that certain Loan Agreement between Debtor, Coal Co., and Secured Party, dated _____, 1975 (the "Loan Agreement"); and

WHEREAS, the Debtor and Coal Co. have agreed to execute and deliver to the Secured Party Notes (the "Notes") to evidence the indebtedness arising from Loans pursuant to the Loan Agreement; and

WHEREAS, Debtor has agreed to execute and deliver to the Secured Party this Security Agreement to secure all obligations of Debtor and/or Coal Co. under said Loan Agreement and all advances and loans made from time to time under said Loan Agreement by the Secured Party; and

WHEREAS, this Security Agreement is the inducement to the making by the Secured Party of the Loan Agreement and the Loans thereunder.

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

Section 1. Security Interest

1.1. Debtor has and hereby does grant to Secured Party, its successors and assigns, a security interest in, and transfers, grants, conveys, and assigns to Secured Party, its successors and assigns, as security, all of the Receivables of Debtor to secure the Liabilities of Debtor and Coal Co.

1.2. "Receivables" as used herein shall mean:

- A. Accounts, accounts receivable, contract rights, chattel paper, instruments, general intangibles, notes, drafts, acceptances, and other forms of obligations and receivables, now owned or hereafter acquired by Debtor, whether now existing or hereafter arising, and whether or not specifically assigned to Bank;
- B. All goods, instruments, documents of title, policies and certificates of insurance, chattel paper, deposits, money or other property now or hereafter owned by debtor or in which Debtor now has or hereafter acquires an interest and which are now or hereafter in possession of Bank or as to which Bank now or hereafter controls

possession by documents of title or otherwise; and

- C. The proceeds and products of all of the foregoing items described in A. and B. of this Section 1.2.

Upon request from Bank at any time or times, Debtor will assign and deliver to Bank any of the Receivables covered by this Agreement and will furnish to Bank additional collateral requested by Bank as security for the Liabilities, together with whatever additional executed instruments or agreements Bank requests.

1.3. "Liabilities" as used herein shall mean:

- A. The prompt payment by Debtor and Coal Co. to the Secured Party, its successors and assigns, of all sums due or to become due under all loans or advances made concurrently herewith or from time to time hereafter to, or for the benefit of, Debtor and/or Coal Co. pursuant to the Loan Agreement and under the Notes executed and delivered by Debtor and Coal Co. to Secured Party, the performance and observance of all obligations, agreements and covenants of Debtor and Coal Co. under the Loan Agreement, and the performance and observance by Debtor of all of the agreements and covenants contained in this Security Agreement;
- B. The payment of all other indebtedness of the Debtor arising pursuant to the provisions of this instrument; and

C. All costs incurred by or on behalf of the Secured Party in connection with enforcing payments of sums due under the Notes and the Loan Agreement or other performance of the Loan Agreement and enforcing its rights under this Security Agreement.

Section 2. Collection of Receivables

2.1. Debtor agrees that it will, unless otherwise directed by Bank, collect all of its Receivables and whenever Debtor shall receive any payment of any account receivable, it shall hold such payment in trust for Bank and shall forthwith deliver the same to Bank without commingling with any funds belonging to Sales Co. or Coal Co., unless otherwise agreed to by Bank. Debtor authorizes Bank or any employee thereof, at any time, to endorse the name of Debtor upon any checks or other items which are received in payment of any Receivable and to do any and all things necessary in order to reduce the same to money.

2.2. Upon request of Bank, Debtor shall make available for inspection to duly authorized representatives of Bank any of their books and records and shall furnish to Bank any information regarding their business affairs and financial condition within a reasonable time after receipt of written request therefor. Bank shall, at any time, have the right, but not the duty, to make verification with or notify any account debtor or obligor on any of the Receivables of Debtor and to demand and receive payment thereof directly to Bank.

2.3. Debtor shall furnish to Bank on a weekly basis an aged list of all accounts receivable of Debtor setting forth that portion of such accounts receivable which are not due, which are past due one (1) to thirty (30) days, and which are past due in excess of thirty (30) days.

2.4. Debtor shall immediately notify Bank in the event of the refusal by an account debtor to accept or pay any account receivable when due, or of any overdue account receivable, or the return of or offer to return any of the goods or property which are the subject of any account receivable, and of the bankruptcy, insolvency, or financial embarrassment of any account debtor, and of any claim asserted for credit, allowance, adjustment, setoff or counterclaim where the amounts involved exceed Twenty-Five Thousand Dollars (\$25,000.00).

Section 3. Covenants of the Debtor

3.1. Debtor will perform and observe all of the terms, conditions, covenants, or agreements contained herein, in the Loan Agreement, or in the Notes.

3.2. If any of Debtor's Receivables arise out of contracts with or orders from the United States or any department, agency or instrumentality thereof, Debtor will immediately notify Bank thereof in writing and will execute any instrument and take any steps required by Bank in order that all money due and to become due under such contract or order shall be assigned to Bank and due notice thereof given to the appropriate Governmental agency.

3.3. Except for any financing statement in favor of Secured Party, no financing statement covering any of Receivables or the proceeds thereof is on file in any public office. Debtor has not granted or given, and shall not grant or give, a security interest in or a financing statement covering any of the Receivables to anyone other than Secured Party. On demand, Debtor will execute and deliver to Secured Party such financing statements and other documents and instruments and do all acts as in the judgment of Secured Party may be necessary or appropriate to establish and maintain a valid and prior security interest in the Receivables. Debtor shall pay all costs of any filings of financing statements or other documents or instruments.

3.4. Debtor shall not, voluntarily or involuntarily, subject the Receivables or their proceeds, or allow the same to be subjected to any interest of any transferee, buyer, secured party, encumbrancer, or other third person, and shall not modify any of the Receivables with the account debtor or diminish any security for any of the Receivables without first receiving written consent from the Secured Party.

3.5. With respect to any of the Receivables held by Bank as security for the Liabilities, Debtor assents to all extensions or postponements of the time of payment thereof or any other indulgence in connection therewith, to each substitution, exchange or release of collateral, to the addition or release of any party primarily or secondarily liable, to the acceptance of partial payments thereon, and the settlement, compromise or adjustment thereof, all in such manner and at such time or times as Bank shall deem advisable.

Bank shall have no duty as to the collection or protection of Receivables or any income therefrom, nor as to the preservation of rights against prior parties, nor as to the preservation of any right pertaining thereto, beyond the safe custody of Receivables in the possession of Bank.

Section 4. Defaults and Remedies

4.1. The following events (herein called "Defaults") shall constitute defaults hereunder:

- A. Sales Co. and/or Coal Co. shall fail to pay any principal or interest due under any of the Notes when the same shall become due; or
- B. Any representation, covenant, or warranty made by Sales Co. and/or Coal Co. in this Security Agreement or in the Loan Agreement, as the same may be amended, shall prove to have been incorrect in any material respect when made; or
- C. Sales Co. and/or Coal Co. shall fail to perform or observe any other terms, conditions, covenants, or agreements contained in this Security Agreement, or in the Notes, or in the Loan Agreement.

4.2. Upon the occurrence of any Default hereunder, any or all of the Notes, with accrued interest thereon, shall become and be immediately due and payable, and all other obligations of the Debtor hereunder shall become and be immediately due and payable, at the option of Bank. Anything contained in this Security Agreement or in the Loan Agreement notwithstanding, Bank may demand payment of

any of the Notes at any time as provided therein. Upon the occurrence of any Default hereunder, Secured Party shall have and may exercise any and all of the rights and remedies granted pursuant to this Security Agreement, or to the Loan Agreement, or under the Uniform Commercial Code of Ohio.

4.3. The proceeds of any collection of, or or any sale or other disposal of, any Receivables covered under this Security Agreement or any Receivables or other collateral covered under any other Security Agreement, Mortgage, or other instrument securing the Liabilities, made pursuant to Section 4.2 hereof, shall be applied in the following order:

- A. First, to the payment of reasonable expenses, including attorneys fees, incurred by the Secured Party in exercising any of the rights or remedies herein granted, or now or hereafter existing at law, including specifically, but not limited to, expenses of retaking, holding, preparing for sale, selling, and the like, of the Receivables or other collateral and expenses of realization from collections.
- B. Second, to the payment of any interest due under any of the Notes; and
- C. Third, to the payment of the unpaid principal balances of the Notes in the order of their dates beginning with those bearing the earliest date; and
- D. Fourth, to the payment of any other obligations of the Debtor and/or Coal Co. to Secured Party hereunder or under the Loan Agreement; and

E. Fifth, any surplus then remaining to or on the order of the Debtor, its successors or assigns, or to the person or persons who may be lawfully entitled to receive the same, or as any Court of competent jurisdiction may direct; provided, however, that in the event that said proceeds of any such collection, sale or other disposal are insufficient to pay in full all of the payments provided for in Section 4.3. A, B, C, D above, then Debtor and Coal Co., jointly and severally, shall be liable for any such deficiency.

4.4. Debtor hereby irrevocably appoints the Bank, its agents or attorneys, its true and lawful attorney, with power of substitutio for it and in its name, or in the name of the Bank or otherwise, for the use and benefit of the Bank but at the cost and expense of Debtor generally to sell, assign, transfer, pledge, make any agreements with respect to or otherwise deal with any assets pledged to the Bank, as fully and completely as though the Bank were the absolute owner thereof for all purposes. For the purpose of realizing its rights therein, the Bank may endorse checks in the name of Debtor. The powers conferred on the Bank by this Section 4.4. are solely to protect its own interests and shall not impose any duties upon the Bank to exercise any such powers.

4.5. In addition to the rights and remedies of the Bank as provided in this Section 4 hereof, Debtor hereby fully authorizes and empowers the Bank to sell, assign, and deliver all of the security herefor, or any part thereof or any substitute therefor or any additi

thereto, at any public or private sale, at the option of the Bank or any officer or anyone acting on behalf of the Bank, and the Bank, its officers or agents may bid and become purchasers at any such sale. In case of any such sale to the Secured Party, or its agents or officers, the Secured Party may, for the purpose of making payment for the Receivables, or any part thereof, so purchased, use any claim then due and payable to the Secured Party under any of the Notes or hereunder, as a credit against the purchase price.

4.6. Each and every right and remedy herein specifically given to the Secured Party or otherwise existing shall be cumulative and shall be in addition to every other right and remedy herein specifically given or now or hereafter existing at law, or in equity or by statute, and each and every right and remedy, whether specific herein given or otherwise existing may be exercised from time to time as often and in such order as may be deemed expedient by the Secured Party; and the exercise or the beginning of the exercise of any right or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right or remedy. No delay or omission by the Secured Party or by any holder of the Notes in the exercise of any right or remedy shall impair any such right or remedy or be construed to be a waiver of any default of the Debtor or an acquiescence therein.

4.7. In case the Secured Party shall have proceeded to enforce any right, power or remedy under this Security Agreement by foreclosure

entry, or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Secured Party, then and in every such case the Debtor and the Second Party shall be restored to their former positions and rights hereunder with respect to the property subject or intended to be subject to this Security Agreement, and all rights, remedies and powers of the Secured Party shall continue as if no such proceedings had been taken.

4.8. To the full extent that it may lawfully so agree, the Debtor will not at any time insist upon, plead, claim or take the benefit or advantage of any appraisalment, valuation, stay, extension, moratorium or redemption law now or hereafter in force, in order to prevent, delay or hinder the enforcement of this Security Agreement or the absolute sale or other disposal of any portion or all of the Receivables, or the possession thereof by any purchaser at any sale or other disposal hereunder, and the Debtor, for itself and all who may claim under it, as far as it or they now or hereafter lawfully may, hereby waive the benefit of all such laws. The Debtor, for itself, and all who may claim under it, as far as it or they now or hereafter lawfully may, also waive all right to have the Receivable marshalled upon any foreclosure hereof and agree that any court having jurisdiction to foreclose this Security Agreement may order the sale of the Receivables as an entirety, or in parts.

Section 5. General Provisions

5.1. Debtor's chief place of business is in the State of Ohio and Debtor's only office, and the place where the records concerning

all Receivables are kept, is at 88 East Broad Street, Columbus, Ohio 43215. Debtor will not change the location of its office without first notifying Bank in writing.

5.2. Notice shall be deemed to have been properly given to Debtor when deposited in the United States Mail, registered or certified, postage prepaid, and addressed to Debtor at 88 East Broad Street, Columbus, Ohio 43215, whether or not the same is actually received by Debtor. Any communication to Bank shall be deemed properly given if similarly mailed to the Commercial Loan Department at its Main Office at 100 East Broad Street, Columbus, Ohio 43215.

5.3. No delay on the part of the Bank in exercising any right, power or privilege granted hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof. The rights and remedies herein expressly specified are cumulative and not exclusive of any other rights and remedies which the Bank would otherwise have.

5.4. No amendment, modification, termination, or waiver of any provision of this Security Agreement, the Notes, or the Loan Agreement, nor consent to any departure by Sales Co. or Coal Co. therefrom, shall in any event be effective unless the same shall be in writing and signed by the Bank, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on Sales Co. or Coal Co. in any case shall entitle Sales Co. or Coal Co. to any other or further notice or demand and in similar or

other circumstances.

5.5. This Security Agreement, the Notes, and the Loan Agreement or any other instruments, documents, or agreements to be delivered hereunder, are being executed and delivered and are intended to be performed in the State of Ohio and shall be in all respects interpreted in accordance with the laws of said State.

5.6. All covenants and agreements in this Security Agreement contained by or on behalf of any of the parties hereto shall bind and inure to the benefit of the respective successors and assigns of the parties hereto whether so expressed or not, except that Debtor shall not have the right to assign its rights hereunder or any interest herein without the prior consent of Bank.

5.7. Section headings used in this Security Agreement are for convenience only and are to be given no substantive meaning or significance whatever in construing the terms and provisions of this Security Agreement.

The parties hereto have caused this Security Agreement to be duly executed by their respective duly authorized officers as of the day and year first above written.

SOUTH-EAST COAL SALES COMPANY

By: _____

By: _____
Debtor

THE CITY NATIONAL BANK & TRUST COMPANY
OF COLUMBUS, Columbus, Ohio

By: _____
Secured Party

SECURITY AGREEMENT

THIS SECURITY AGREEMENT, dated _____, 1975
(the "Security Agreement"), from SOUTH-EAST COAL COMPANY, P. O. Box
332, Irvine, Kentucky 40336, a Kentucky corporation (the "Debtor"
or "Coal Co."), to THE CITY NATIONAL BANK & TRUST COMPANY OF
COLUMBUS, 100 East Broad Street, Columbus, Ohio 43215, a national
banking association (the "Secured Party" or the "Bank").

W I T N E S S E T H:

WHEREAS, the Secured Party has agreed to extend a line of
credit to the Debtor and SOUTH-EAST COAL SALES COMPANY, 88 East
Broad Street, Columbus, Ohio 43215 ("Sales Co."), not to exceed the
sum of \$10,000,000.00, pursuant to that certain Loan Agreement between
Debtor, Sales Co., and Secured Party, dated _____, 1975
(the "Loan Agreement"); and

WHEREAS, the Debtor and Sales Co. have agreed to execute and
deliver to the Secured Party Notes (the "Notes") to evidence the
indebtedness arising from Loans pursuant to the Loan Agreement; and

WHEREAS, Debtor has agreed to execute and deliver to the Secured
Party this Security Agreement to secure all obligations of Debtor
and/or Sales Co. under said Loan Agreement and all advances and loans
made from time to time under said Loan Agreement by the Secured
Party; and

WHEREAS, this Security Agreement is the inducement to the
making by the Secured Party of the Loan Agreement and the Loans
thereunder.

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

Section 1. Security Interest

1.1. Debtor has and hereby does grant to Secured Party, its successors and assigns, a security interest in, and transfers, grants, conveys, and assigns to Secured Party, its successors and assigns, as security, all of the Receivables of Debtor to secure the Liabilities of Debtor and Sales Co.

1.2. "Receivables" as used herein shall mean:

- A. Accounts, accounts receivable, contract rights, chattel paper, instruments, general intangibles, notes, drafts, acceptances, and other forms of obligations and receivables, now owned or hereafter acquired by Debtor, whether now existing or hereafter arising, and whether or not specifically assigned to Bank;
- B. All goods, instruments, documents of title, policies and certificates of insurance, chattel paper, deposits, money or other property now or hereafter owned by debtor or in which Debtor now has or hereafter acquires an interest and which are now or hereafter in possession of Bank or as to which Bank now or hereafter controls

possession by documents of title or otherwise; and

- C. The proceeds and products of all of the foregoing items described in A. and B. of this Section 1.2.

Upon request from Bank at any time or times, Debtor will assign and deliver to Bank any of the Receivables covered by this Agreement and will furnish to Bank additional collateral requested by Bank as security for the Liabilities, together with whatever additional executed instruments or agreements Bank requests.

1.3. "Liabilities" as used herein shall mean:

- A. The prompt payment by Debtor and Sales Co. to the Secured Party, its successors and assigns, of all sums due or to become due under all loans or advances made concurrently herewith or from time to time hereafter to, or for the benefit of, Debtor and/or Sales Co. pursuant to the Loan Agreement and under the Notes executed and delivered by Debtor and Sales Co. to Secured Party, the performance and observance of all obligations, agreements and covenants of Debtor and Sales Co. under the Loan Agreement, and the performance and observance by Debtor of all of the agreements and covenants contained in this Security Agreement;
- B. The payment of all other indebtedness of the Debtor arising pursuant to the provisions of this instrument; and

C. All costs incurred by or on behalf of the Secured Party in connection with enforcing payments of sums due under the Notes and the Loan Agreement or other performance of the Loan Agreement and enforcing its rights under this Security Agreement.

Section 2. Collection of Receivables

2.1. Debtor agrees that it will, unless otherwise directed by Bank, collect all of its Receivables and whenever Debtor shall receive any payment of any account receivable, it shall hold such payment in trust for Bank and shall forthwith deliver the same to Bank without commingling with any funds belonging to Coal Co. or Sales Co., unless otherwise agreed to by Bank. Debtor authorizes Bank or any employee thereof, at any time, to endorse the name of Debtor upon any checks or other items which are received in payment of any Receivable and to do any and all things necessary in order to reduce the same to money.

2.2. Upon request of Bank, Debtor shall make available for inspection to duly authorized representatives of Bank any of their books and records and shall furnish to Bank any information regarding their business affairs and financial condition within a reasonable time after receipt of written request therefor. Bank shall, at any time, have the right, but not the duty, to make verification with or notify any account debtor or obligor on any of the Receivables of Debtor and to demand and receive payment thereof directly to Bank.

SECURITY AGREEMENT

This Security Agreement executed this 26th day of July, 1975, between South-East Coal Company, P.O. Box 332, Irvine, Kentucky, 40336, a Kentucky corporation hereinafter referred to as "Debtor", and City National Bank & Trust Company of Columbus, 100 East Broad Street, Columbus, Ohio, 43215, a national banking association hereinafter referred to as "Secured Party".

RECITALS

A. Debtor and South-East Coal Sales Company, 88 East Broad Street, Columbus, Ohio, 43215, a Kentucky corporation hereinafter referred to as "Sales Co.", desire to borrow money from Secured Party and to execute demand collateral notes ("the Notes"), and Secured Party is willing to lend money to Debtor and Sales Co. provided that such loans are secured by a security interest in Debtor's Inventory of coal, in Debtor's Receivables, and in the Receivables of Sales Co.

B. Debtor has agreed to grant Secured Party the above mentioned security interest in Debtor's Inventory of coal and Receivables subject to the following terms and conditions.

C. By separate Security Agreement, Sales Co. is granting Secured Party a security interest in its Receivables.

AGREEMENT AND GRANT OF SECURITY INTERESTS

In consideration of the premises and of other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Secured Party agrees to make such loans to Debtor, and Sales Co., not to exceed an aggregate amount of \$2,000,000.00, as from time to time Secured Party elects to make, such loans to be secured by the security interest granted by Debtor to Secured Party pursuant to Section 2 hereof and a security interest granted by Sales Co. to Secured Party. The amount of such loans shall be based upon the value of Debtor's total inventory of coal at the time the loans are made. Each loan will be evidenced by the Notes executed by Debtor and Sales Co. in form satisfactory to Secured Party, with interest on the unpaid balance, payable monthly on the last day of each month, computed on the daily unpaid balances of all Notes outstanding at any time during that month, on the basis of a 360-day year, at a fluctuating rate equivalent to 1% per annum in excess of the prime rate of Secured Party for ninety day loans to responsible and substantial commercial borrowers in effect from time to time. In computing the unpaid balances of the Notes, there shall be deducted from the face amount of the Notes all payments received and collected by Secured Party, such payments to be applied first to the payment of interest and second to the unpaid principal balances of the Notes as determined by Secured Party.

2. Debtor has and hereby does grant to Secured Party, its successors and assigns, a security interest in, and transfers, grants, conveys, and assigns to Secured Party, its successors and assigns, as security, all of the Inventory and Receivables of Debtor to secure the Liabilities of Debtor and Sales Co.

(a) "Inventory" as used herein shall mean:

- (1) All coal extracted from its natural state now or hereafter owned or acquired by Debtor, wherever located, acquired by Debtor from third parties or extracted by Debtor or third parties from the following property:

Polly Mine - located in Letcher County, Kentucky, near Whitesburg on Camp Branch, a tributary of Rock House Creek which is a tributary to the North Fork of the Kentucky River. Approximately 3,396 acres of coal reserves are at this location.

Line Fork - located in Letcher County, Kentucky on Defeated Creek, a tributary to the North Fork of the Kentucky River on 11,052 acres of coal reserves.

Mine 401 - located in Knott County, Kentucky, near Isom on Breeding Creek. The mine is approximately 1/2 mile from Kentucky Highway 15, situated on 170 acres of coal reserves.

Mine 402 - located in Knott County, Kentucky, on Wolf Pen Branch, a tributary to Little Carr Creek. It is 1.8 miles by county road to Kentucky Highway 15. The mine contains 154 acres of reserves.

Mine 403 - located in Knott County, Kentucky on Breeding Creek. The mine opening is on Kentucky Highway 15, 2.1 miles from the junction of Ky. 15 and Ky. 7 at Isom. Approximately 988 acres of coal reserves in this mine.

(2) The proceeds and products of the collateral described in (1) of this Section 2(a).

(b) "Receivables" as used herein shall mean:

- (1) Accounts, accounts receivable, contract rights, chattel paper, instruments, general intangibles, notes, drafts, acceptances, and other forms of obligations and receivables, now owned or hereafter acquired by Debtor, whether now existing or hereafter arising, and whether or not specifically assigned to Secured Party;
- (2) All goods, instruments, documents of title, policies and certificates of insurance, chattel paper, deposits, money or other property now or hereafter owned by Debtor or in which Debtor now has or hereafter acquires an interest and which are now or hereafter in possession of Secured Party or as to which Secured Party now or hereafter controls possession by documents of title or otherwise; and
- (3) The proceeds and products of all of the collateral described in (1) and (2) of this Section 2(b).

Upon request from Secured Party at any time or times, Debtor will assign and deliver to Secured Party any of the Receivables covered by this Agreement and will furnish to Secured Party additional collateral requested by Secured Party as security for the Liabilities together with whatever additional executed instruments or agreements Secured Party requests. The Inventory and the Receivables are hereinafter collectively referred

to as "the Collateral".

(c) "Liabilities" as used herein shall mean:

- (1) The prompt payment by Debtor and Sales Co. to the Secured Party, its successors and assigns, of all sums due or to become due to Secured Party evidenced by the Notes executed by Debtor and Sales Co. concurrently herewith or from time to time hereafter and the performance and observance by Debtor of all of the agreements and covenants contained in this Security Agreement
- (2) The payment of all other indebtedness of the Debtor arising pursuant to the provisions of this Security Agreement; and
- (3) All costs incurred by or on behalf of the Secured Party in connection with enforcing payments of sums due under the Notes and enforcing its rights under this Security Agreement.

3. Debtor agrees, in connection with the Receivables, that

it will:

- (a) Unless otherwise directed by Secured Party, collect all of the Receivables and, upon receipt of any payment, hold such payment in trust for Secured Party, and forthwith deliver the same to Secured Party without commingling with any other funds, unless otherwise agreed to by Secured Party. Debtor authorizes Secured Party or any employee thereof, at any time, to endorse the name of Debtor upon any checks or other items

which are received in payment of the Receivables and to do any and all things necessary in order to reduce the same to money.

- (b) Upon request of Secured Party, make available for inspection to duly authorized representatives of Secured Party any of Debtor's books and records and will furnish to Secured Party any information regarding Debtor's business affairs and financial condition within a reasonable time after receipt of written request therefor. Secured Party shall, at any time, have the right, but not the duty, to make verification with or notify any account debtor or obligor on any of the Receivables and to demand and receive payment thereof directly to Secured Party.
- (c) Furnish to Secured Party on a weekly basis an aged list of the Receivables setting forth that portion which are not due, which are past due one to thirty days, and which are past due in excess of thirty days.
- (d) Immediately notify Secured Party in the event of the refusal by an account debtor to accept or pay any Receivable when due, or of any overdue Receivable, or the return of or offer to return any of the goods or property which are the subject of any Receivable, and of the bankruptcy, insolvency, or financial embarrassment of any account debtor, and of any claim asserted for credit, allowance,

adjustment, setoff or counterclaim where the amounts involved exceed Twenty-Five Thousand Dollars.

4. Debtor agrees, in connection with the Inventory, that it will:

- (a) On a weekly basis and at the time any loan is made by Secured Party to Debtor and Sales Co., deliver to Secured Party a statement of the total number of tons of coal in Debtor's Inventory of coal, the value thereof, and such other information as required by Secured Party. Such statements will be form satisfactory to Secured Party.
- (b) Notify Secured Party at any time the value of the total number of tons of coal located in Debtor's Inventory of coal is less than 95% of the value stated on the last statement filed with Secured Party pursuant to subparagraph 4(a) above.

5. Debtor hereby represents and warrants to Secured Party that:

- (a) Debtor is a corporation duly organized, validly existing, and in good standing under the laws of the State of Kentucky.
- (b) Debtor has the corporate power and authority to execute this Security Agreement and the Notes, to borrow funds from Secured Party, and to execute and deliver documents incidental to such loans.
- (c) Except for the security interest granted herein and except for prior security interests granted by Debtor and Sales Co. to Secured Party, Debtor is (and, as to the Collateral acquired after the date hereof,

Debtor will be) the owner of the Collateral free from any liens, security interests, or other interests of third persons, and Debtor will defend the Collateral against all claims and demands of all persons at any time claiming an interest therein adverse to Secured Party.

- (d) Except for any financing statement in favor of Secured Party, no financing statement, mortgage, or other instrument providing for a lien on any of the Collateral or the proceeds thereof is on file in any public office. Debtor has not granted or given, and shall not grant or give, a security interest in, a financing statement, mortgage, or other instrument providing for a lien on any of the Collateral to anyone other than Secured Party. On demand, Debtor will execute and deliver to Secured Party such financing statements and other documents and instruments and do all acts as in the judgment of Secured Party may be necessary or appropriate to establish and maintain a valid and prior security interest in the Collateral. Debtor shall pay all costs of any filings of financing statements or other documents or instruments. Any prior agreements between Debtor and Secured Party are hereby modified to allow the granting of security interests and the filings of financing statements contemplated herein without breach of such prior agreements.

- (e) Debtor will keep the Inventory insured against loss, damage, theft, and other risks in such amounts as is acceptable to Secured Party, with loss payable clauses in favor of Secured Party, and will deliver all insurance policies to Secured Party.
- (f) Debtor will maintain the Inventory in good condition and will promptly pay all taxes and preservation costs pertaining to the Inventory.
- (g) Except for sales in the ordinary course of Debtor's business, the Debtor will not sell or otherwise transfer the Inventory without the prior written consent of Secured Party.
- (h) Debtor shall not, voluntarily or involuntarily, subject the Receivables or their proceeds, or allow the same to be subjected to any interest of any transferee, buyer, secured party, encumbrancer, or other third person, and shall not modify any of the Receivables with the account debtor or diminish any security for any of the Receivables without first receiving written consent from the Secured Party.
- (i) With respect to any of the Receivables held by Secured Party as security for the Liabilities, Debtor assents to all extensions or postponements of the time of payment thereof or any other indulgence in connection therewith, to each substitution,

exchange or release of Collateral, to the addition or release of any party primarily or secondarily liable, to the acceptance of partial payments thereon and the settlement, compromise or adjustment thereof, all in such manner and at such time or times as Secured Party shall deem advisable. Secured Party shall have no duty as to the collection or protection of Receivables or any income therefrom, nor as to the preservation of rights against prior parties, nor as to the preservation of any right pertaining thereto, beyond the safe custody of Receivables in the possession of Secured Party.

- (j) If any of Debtor's Receivables arise out of contracts with or orders from the United States or any department, agency or instrumentality thereof, Debtor will immediately notify Secured Party thereof in writing and will execute any instrument and take any steps required by Secured Party in order that all money due and to become due under such contract or order shall be assigned to Secured Party and due notice thereof given to the appropriate Governmental agency.
- (k) At its option, Secured Party may discharge taxes, liens, or security interests or other encumbrances at any time levies are placed on the Collateral, may pay for insurance on the Collateral and may

pay for the maintenance and preservation of the Collateral. Debtor agrees to reimburse Secured Party on demand for any payment made, or any expense incurred by Secured Party pursuant to the foregoing authorization and Secured Party is granted a security interest in the Collateral to secure said payments.

6. So long as Debtor is not in default hereunder, Debtor has the right, in the ordinary course of its business, to sell the Inventory to customers of Debtor. Secured Party's security interest hereunder shall attach to all proceeds (in whatever form, including insurance proceeds) of the sale or other disposition by Debtor.

7. (a) The following events (herein called "Defaults") shall constitute defaults hereunder:

- (1) Debtor and/or Sales Co. shall fail to pay any principal or interest due under any of the Notes when the same shall become due; or
- (2) Any representation, covenant, or warranty made by Debtor in this Security Agreement, as the same may be amended, shall prove to have been incorrect in any material respect when made; or
- (3) Debtor and/or Sales Co. shall fail to perform or observe any other terms, conditions, covenants, or agreements contained in this Security Agreement or in the Notes.

(b) Upon the occurrence of any Default hereunder, any or all of the Notes, with accrued interest thereon,

shall become and be immediately due and payable, and all other obligations of the Debtor hereunder shall become and be immediately due and payable, at the option of Secured Party. Anything contained in this Security Agreement or in the Loan Agreement notwithstanding, Secured Party may demand payment of any of the Notes at any time as provided therein. Upon the occurrence of any Default hereunder, Secured Party shall have and may exercise any and all rights and remedies granted pursuant to this Security Agreement, or to the Loan Agreement, or under the Uniform Commercial Code of Ohio.

(c) The proceeds of any collection of, or any sale or other disposal of, any Collateral covered under this Security Agreement made pursuant to Section 7(b) hereof, shall be applied in the following order:

(1) First, to the payment of reasonable expenses, including attorneys fees, incurred by the Secured Party in exercising any of the rights or remedies herein granted, or now or hereafter existing at law, including specifically, but not limited to, expenses of retaking, holding, preparing for sale, selling, and the like, of the Receivables or other Collateral and expenses of realization from collections.

- (2) Second, to the payment of any interest due under any of the Notes; and
 - (3) Third, to the payment of the unpaid principal balances of the Notes in the order of their dates beginning with those bearing the earliest date; and
 - (4) Fourth, to the payment of any other obligations of the Debtor and/or Sales Co. to Secured Party hereunder; and
 - (5) Fifth, any surplus then remaining to or on the order of the Debtor, its successors or assigns, or to the person or persons who may be lawfully entitled to receive the same, or as any Court of competent jurisdiction may direct; provided, however, that in the event that said proceeds of any such collection, sale or other disposal are insufficient to pay in full all of the payments provided for in Section 7(c)(1)(2)(3)(4 and (5) above, then Debtor and Sales Co., jointly and severally, shall be liable for any such deficiency.
- (d) Debtor hereby irrevocably appoints the Secured Party its agents or attorneys, its true and lawful attorney, with power of substitution, for it and in its name, or in the name of the Secured Party or otherwise, for the use and benefit of the Secured Party but at the cost and expense of Debtor,

generally to sell, assign, transfer, pledge, make any agreements with respect to or otherwise deal with any assets pledged to the Secured Party, as fully and completely as though the Secured Party were the absolute owner thereof for all purposes. For the purpose of realizing its rights therein, the Secured Party may endorse checks in the name of Debtor. The powers conferred on the Secured Party by this Section 7(d) are solely to protect its own interests and shall not impose any duties upon the Secured Party to exercise any such powers.

- (e) In addition to the rights and remedies of the Secured Party as provided in this Section 7, Debtor hereby fully authorizes and empowers the Secured Party to sell, assign, and deliver all of the security herefor, or any part thereof or any substitute therefor or any addition thereto, at any public or private sale, at the option of the Secured Party or any officer or anyone acting on behalf of the Secured Party and the Secured Party, its officers or agents may bid and become purchasers at any such sale. In case of any such sale to the Secured Party, or its agents or officers, the Secured Party may, for the purpose of making payment for the Collateral, or

any part thereof, so purchased, use any claim then due and payable to the Secured Party under any of the Notes or hereunder, as a credit against the purchase price.

- (f) Each and every right and remedy herein specifically given to the Secured Party or otherwise existing shall be cumulative and shall be in addition to every other right and remedy herein specifically given or now or hereafter existing may be exercised from time to time as often and in such order as may be deemed expedient by the Secured Party; and the exercise or the beginning of the exercise of any right or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right or remedy. No delay or omission by the Secured Party or by any holder of the Notes in the exercise of any right or remedy shall impair any such right or remedy or be construed to be a waiver of any default of the Debtor or an acquiescence therein.
- (g) In case the Secured Party shall have proceeded to enforce any right, power or remedy under this Security Agreement by foreclosure entry, or otherwise and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Secured Party, then and in every such

case the Debtor and the Secured Party shall be restored to their former positions and rights hereunder with respect to the property subject or intended to be subject to this Security Agreement and all rights, remedies and powers of the Secured Party shall continue as if no such proceedings had been taken.

- (h) To the full extent that it may lawfully so agree, the Debtor will not at any time insist upon, plead, claim or take the benefit or advantage of any appraisement, valuation, stay, extension, moratorium or redemption law now or hereafter in force, in order to prevent, delay or hinder the enforcement of this Security Agreement or the absolute sale or other disposal of any portion or all of the Collateral or the possession thereof by any purchaser at any sale or other disposal hereunder, and the Debtor, for itself and all who may claim under it, as far as it or they now or hereafter lawfully may, hereby waive the benefit of all such laws. The Debtor, for itself, and all who may claim under it, as far as it or they now or hereafter lawfully may, also waive all right to have the Collateral marshalled upon any foreclosure hereof

and agree that any court having jurisdiction to foreclose this Security Agreement may order the sale of the Collateral as an entirety, or in parts.

8. Debtor's chief place of business is as stated at the beginning of this Security Agreement. Debtor will not change the location of its office without first notifying Secured Party in writing.

9. Notice shall be deemed to have been properly given to either party when deposited in the United States Mail, registered or certified, postage prepaid, and addressed to that party at the address first stated in this Security Agreement for such party. Any notice given to Secured Party should be sent to the attention of its Commercial Loan Department.

10. No delay on the part of the Secured Party in exercising any right, power or privilege granted hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof. The rights and remedies herein expressly specified are cumulative and not exclusive of any other rights and remedies which Secured Party would otherwise have.

11. No amendment, modification, termination, or waiver of any provision of this Security Agreement or the Notes, nor consent to any departure by Debtor therefrom, shall in any event be effective unless the same shall be in writing and signed by Secured Party and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on Debtor in any case shall entitle Debtor to any other or further notice or demand and in similar or other circumstances

12. This Security Agreement, the Notes, and any other instruments, documents, or agreements to be delivered hereunder, are being executed and delivered and are intended to be performed in the State of Ohio and shall be in all respects interpreted in accordance with the laws of said State.

13. All covenants and agreements in this Security Agreement contained by or on behalf of any of the parties hereto shall bind and inure to the benefit of the respective successors and assigns of the parties hereto whether so expressed or not, except that Debtor shall not have the right to assign its rights hereunder or any interest herein without the prior consent of Secured Party.

The parties hereto have caused this Security Agreement to be duly executed by their respective duly authorized officers as of the day and year first above written.

SOUTH-EAST COAL COMPANY

By: Harry L. Lohr Jr. Pres.

By: D. H. Lumsden V.P.
Debtor

THE CITY NATIONAL BANK & TRUST COMPANY
OF COLUMBUS, Columbus, Ohio

By: Philip C. Parker Loan Officer
Secured Party

SECURITY AGREEMENT

This Security Agreement executed this 3rd day of July, 1975, between South-East Coal Sales Company, 88 East Broad Street, Columbus, Ohio, 43215, a Kentucky corporation hereinafter referred to as "Debtor", and City National Bank & Trust Company of Columbus, 100 East Broad Street, Columbus, Ohio, 43215, a national banking association hereinafter referred to as "Secured Party".

RECITALS

A. Debtor and South-East Coal Company, P. O. Box 332, Irvine, Kentucky, 40336, a Kentucky corporation hereinafter referred to as "Coal Co.", desire to borrow money from Secured Party and to execute demand collateral notes ("the Notes"), and Secured Party is willing to lend money to Debtor and Coal Co. provided that such loans are secured by a security interest in Debtor's Receivables, and in the Receivables and Inventory of coal of Coal Co.

B. Debtor has agreed to grant Secured Party the above mentioned security interest in Debtor's Receivables subject to the following terms and conditions.

C. By separate Security Agreement, Coal Co. is granting Secured Party a security interest in its Receivables and its Inventory of coal.

AGREEMENT AND GRANT OF SECURITY INTERESTS

In consideration of the premises and of other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Secured Party agrees to make such loans to Debtor, and Coal Co., not to exceed an aggregate amount of \$2,000,000.00, as from time to time Secured Party elects to make, such loans to be secured by the security interest granted by Debtor to Secured Party pursuant to Section 2 hereof and a security interest granted by Coal Co. to Secured Party. The amount of such loans shall be based upon the value of the total inventory of coal of Coal Co. at the time the loans are made. Each loan will be evidenced by the Notes executed by Debtor and Coal Co. in form satisfactory to Secured Party, with interest on the unpaid balance, payable monthly on the last day of each month, computed on the daily unpaid balances of all Notes outstanding at any time during that month, on the basis of a 360-day year, at a fluctuating rate equivalent to 1% per annum in excess of the prime rate of Secured Party for ninety day loans to responsible and substantial commercial borrowers in effect from time to time. In computing the unpaid balances of the Notes, there shall be deducted from the face amount of the Notes all payments received and collected by Secured Party, such payments to be applied first to the payment of interest and second to the unpaid principal balances of the Notes as determined by Secured Party.

2. Debtor has and hereby does grant to Secured Party, its successors and assigns, a security interest in, and transfers, grants, conveys, and assigns to Secured Party, its successors and assigns, as security, all of the Receivables of Debtor to secure the Liabilities of Debtor and Coal Co.

(a) "Receivables" as used herein shall mean:

- (1) Accounts, accounts receivable, contract rights, chattel paper, instruments, general intangibles, notes, drafts, acceptances, and other forms of obligations and receivables, now owned or hereafter acquired by Debtor, whether now existing or hereafter arising, and whether or not specifically assigned to Secured Party;
- (2) All goods, instruments, documents of title, policies and certificates of insurance, chattel paper, deposits, money or other property now or hereafter owned by Debtor or in which Debtor now has or hereafter acquires an interest and which are now or hereafter in possession of Secured Party or as to which Secured Party now or hereafter controls possession by documents of title or otherwise; and
- (3) The proceeds and products of all of the collateral described in (1) and (2) of this Section 2(b).

Upon request from Secured Party at any time or times, Debtor will assign and deliver to Secured Party any of the Receivables covered by this Agreement and will furnish to Secured Party additional collateral requested by Secured Party as security for the Liability together with whatever additional executed instruments or agreements Secured Party requests. Receivables are hereinafter referred to as "the Collateral".

(b) "Liabilities" as used herein shall mean:

- (1) The prompt payment by Debtor and Coal Co. to the Secured Party, its successors and assigns of all sums due or to become due to Secured Party evidenced by the Notes executed by Debtor and Coal Co. concurrently herewith or from time to time hereafter and the performance and observance by Debtor of all of the agreements and covenants contained in this Security Agreement;
- (2) The payment of all other indebtedness of the Debtor arising pursuant to the provisions of this Security Agreement; and
- (3) All costs incurred by or on behalf of the Secured Party in connection with enforcing payments of sums due under the Notes and enforcing its rights under this Security Agreement.

3. Debtor agrees, in connection with the Receivables, that

it will:

- (a) Unless otherwise directed by Secured Party, collect all of the Receivables and, upon receipt of any payment, hold such payment in trust for Secured Party, and forthwith deliver the same to Secured Party without commingling with any other funds, unless otherwise agreed to by Secured Party. Debtor authorizes Secured Party or any employee thereof, at any time, to endorse the name of Debtor upon any checks or other items

which are received in payment of the Receivables and to do any and all things necessary in order to reduce the same to money.

- (b) Upon request of Secured Party, make available for inspection to duly authorized representatives of Secured Party any of Debtor's books and records and will furnish to Secured Party any information regarding Debtor's business affairs and financial condition within a reasonable time after receipt of written request therefor. Secured Party shall, at any time, have the right, but not the duty, to make verification with or notify any account debtor or obligor on any of the Receivables and to demand and receive payment thereof directly to Secured Party.
- (c) Furnish to Secured Party on a weekly basis an aged list of the Receivables setting forth that portion which are not due, which are past due one to thirty days, and which are past due in excess of thirty days.
- (d) Immediately notify Secured Party in the event of the refusal by an account debtor to accept or pay any Receivable when due, or of any overdue Receivable, or the return of or offer to return any of the goods or property which are the subject of any Receivable, and of the bankruptcy, insolvency or financial embarrassment of any account debtor, and of any claim asserted for credit, allowance,

adjustment, setoff or counterclaim where the amount involved exceed Twenty-Five Thousand Dollars.

4. Debtor hereby represents and warrants to Secured Party that:

- (a) Debtor is a corporation duly organized, validly existing, and in good standing under the laws of the State of Kentucky.
- (b) Debtor has the corporate power and authority to execute this Security Agreement and the Notes, to borrow funds from Secured Party, and to execute and deliver documents incidental to such loans.
- (c) Except for the security interest granted herein and except for prior security interests granted by Debtor and Coal Co. to Secured Party, Debtor is (and, as to the Collateral acquired after the date hereof, Debtor will be) the owner of the Collateral free from any liens, security interests, or other interests of third persons, and Debtor will defend the Collateral against all claims and demands of all persons at any time claiming an interest therein adverse to Secured Party.
- (d) Except for any financing statement in favor of Secured Party, no financing statement, mortgage, or other instrument providing for a lien on any of the Collateral or the proceeds thereof is on file in any public office. Debtor has not granted or

given, and shall not grant or give, a security interest in, a financing statement, mortgage, or other instrument providing for a lien on any of the Collateral to anyone other than Secured Party. On demand, Debtor will execute and deliver to Secured Party such financing statements and other documents and instruments and do all acts as in the judgment of Secured Party may be necessary or appropriate to establish and maintain a valid and prior security interest in the Collateral. Debtor shall pay all costs of any filings of financing statements or other documents or instruments. Any prior agreements between Debtor and Secured Party are hereby modified to allow the granting of security interests and the filings of financing statements contemplated herein without breach of such prior agreements.

- (e) Debtor shall not, voluntarily or involuntarily, subject the Receivables or their proceeds, or allow the same to be subjected to any interest of any transferee, buyer, secured party, encumbrancer, or other third person, and shall not modify any of the Receivables with the account debtor or diminish any security for any of the Receivables without first receiving written consent from the Secured Party.
- (f) With respect to any of the Receivables held by Secured Party as security for the Liabilities, Debtor

assents to all extensions or postponements of the time of payment thereof or any other indulgence in connection therewith, to each substitution, exchange or release of Collateral, to the addition or release of any party primarily or secondarily liable, to the acceptance of partial payments thereon and the settlement, compromise or adjustment thereof, all in such manner and at such time or times as Secured Party shall deem advisable. Secured Party shall have no duty as to the collection or protection of Receivables or any income therefrom, nor as to the preservation of rights against prior parties, nor as to the preservation of any right pertaining thereto, beyond the safe custody of Receivables in the possession of Secured Party.

- (g) If any of Debtor's Receivables arise out of contracts with or orders from the United States or any department, agency or instrumentality thereof, Debtor will immediately notify Secured Party thereof in writing and will execute any instrument and take any steps required by Secured Party in order that all money due and to become due under such contract or order shall be assigned to Secured Party and due notice thereof given to the appropriate Governmental agency.
- (h) At its option, Secured Party may discharge taxes,

liens, or security interests or other encumbrances at any time levies are placed on the Collateral, may pay for insurance on the Collateral and may pay for the maintenance and preservation of the Collateral. Debtors agrees to reimburse Secured Party on demand for any payment made, or any expense incurred by Secured Party pursuant to the foregoing authorization and Secured Party is granted a security interest in the Collateral to secure said payments.

5. (a) The following events (herein called "Defaults") shall constitute defaults hereunder:

- (1) Debtor and/or Coal Co. shall fail to pay any principal or interest due under any of the Notes when the same shall become due; or
- (2) Any representation, covenant, or warranty made by Debtor in this Security Agreement, as the same may be amended, shall prove to have been incorrect in any material respect when made; or
- (3) Debtor and/or Coal Co. shall fail to perform or observe any other terms, conditions, covenants, or agreements contained in this Security Agreement or in the Notes.

(b) Upon the occurrence of any Default hereunder, any or all of the Notes, with accrued interest thereon, shall become and be immediately due.

payable, and all other obligations of the Debtor hereunder shall become and be immediately due and payable, at the option of Secured Party. Anything contained in this Security Agreement or in the Loan Agreement notwithstanding, Secured Party may demand payment of any of the Notes at any time as provided therein. Upon the occurrence of any Default hereunder, Secured Party shall have and may exercise any and all rights and remedies granted pursuant to this Security Agreement, or to the Loan Agreement, or under the Uniform Commercial Code of Ohio.

(c) The proceeds of any collection of, or any sale or other disposal of, any Collateral covered under this Security Agreement made pursuant to Section 7(b) hereof, shall be applied in the following order:

- (1) First, to the payment of reasonable expenses, including attorneys fees, incurred by the Secured Party in exercising any of the rights or remedies herein granted, or now or hereafter existing at law, including specifically, but not limited to, expenses of retaking, holding, preparing for sale, selling, and the like, of the Receivables or other Collateral and expenses of realization from collections.
- (2) Second, to the payment of any interest

due under any of the Notes; and

- (3) Third, to the payment of the unpaid principal balances of the Notes in the order of their dates beginning with those bearing the earliest date; and
- (4) Fourth, to the payment of any other obligation of the Debtor and/or Coal Co. to Secured Party hereunder; and
- (5) Fifth, any surplus then remaining to or on the order of the Debtor, its successors or assigns or to the person or persons who may be lawfully entitled to receive the same, or as any Court of competent jurisdiction may direct; provided however, that in the event that said proceeds of any such collection, sale or other disposal are insufficient to pay in full all of the payments provided for in Section 7(c)(1)(2)(3) and (5) above, then Debtor and Coal Co., jointly and severally, shall be liable for any such deficiency.

- (d) Debtor hereby irrevocably appoints the Secured Party its agents or attorneys, its true and lawful attorney, with power of substitution, for it and in its name, or in the name of the Secured Party or otherwise, for the use and benefit of the Secured Party but at the cost and expense of Debtor, generally to sell, assign, transfer, pledge, make any a

with any assets pledged to the Secured Party, as fully and completely as though the Secured Party were the absolute owner thereof for all purposes. For the purpose of realizing its rights therein, the Secured Party may endorse checks in the name of Debtor. The powers conferred on the Secured Party by this Section 7(d) are solely to protect its own interests and shall not impose any duties upon the Secured Party to exercise any such powers.

- (e) In addition to the rights and remedies of the Secured Party as provided in this Section 7, Debtor hereby fully authorizes and empowers the Secured Party to sell, assign, and deliver all of the security herefor, or any part thereof or any substitute therefor or any addition thereto, at any public or private sale, at the option of the Secured Party or any officer or anyone acting on behalf of the Secured Party and the Secured Party, its officers or agents may bid and become purchasers at any such sale. In case of any such sale to the Secured Party, or its agents or officers, the Secured Party may, for the purpose of making payment for the Collateral, or any part thereof, so purchased, use any claim then due and payable to the Secured Party under any of the Notes or hereunder, as a credit against the purchase price.

- (f) Each and every right and remedy herein specifically given to the Secured Party or otherwise existing shall be cumulative and shall be in addition to every other right and remedy herein specifically given or now or hereafter existing may be exercised from time to time as often and in such order as may be deemed expedient by the Secured Party; and the exercise or the beginning of the exercise of any right or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right or remedy. No delay or omission by the Secured Party or by any holder of the Notes in the exercise of any right or remedy shall impair any such right or remedy or be construed to be a waiver of any default of the Debtor or an acquiescence therein.
- (g) In case the Secured Party shall have proceeded to enforce any right, power or remedy under this Security Agreement by foreclosure entry, or otherwise and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Secured Party, then and in every such case the Debtor and the Secured Party shall be restored to their former positions and rights hereunder with respect to the property subject or intended to be subject to this Security Agreement

and all rights, remedies and powers of the Secured Party shall continue as if no such proceedings had been taken.

- (h) To the full extent that it may lawfully so agree, the Debtor will not at any time insist upon, plead, claim or take the benefit or advantage of any appraisement, valuation, stay, extension, mora or redemption law now or hereafter in force, in order to prevent, delay or hinder the enforcement of this Security Agreement or the absolute sale or other disposal of any portion or all of the Collateral or the possession thereof by any purchaser at any sale or other disposal hereunder, and the Debtor, for itself and all who may claim under it, as far as it or they now or hereafter lawfully may, hereby waive the benefit of all such laws. The Debtor, for itself, and all who may claim under it, as far as it or they now or hereafter lawfully may, also waive all right to have the Collateral marshalled upon any foreclosure here and agree that any court having jurisdiction to foreclose this Security Agreement may order the sale of the Collateral as an entirety, or in parts.

6. Debtor's chief place of business is as stated at the beginning of this Security Agreement. Debtor will not change the location of its office without first notifying Secured Party in writing.

7. Notice shall be deemed to have been properly given to either party when deposited in the United States Mail, registered or certified, postage prepaid, and addressed to that party at the address first stated in this Security Agreement for such party. Any notice given to Secured Party should be sent to the attention of its Commercial Loan Department.

8. No delay on the part of the Secured Party in exercising any right, power or privilege granted hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof. The rights and remedies herein expressly specified are cumulative and not exclusive of any other rights and remedies which Secured Party would otherwise have.

9. No amendment, modification, termination, or waiver of any provision of this Security Agreement or the Notes, nor consent to any departure by Debtor therefrom, shall in any event be effective unless the same shall be in writing and signed by Secured Party and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on Debtor in any case shall entitle Debtor to any other or further notice or demand and in similar or other circumstances.

10. This Security Agreement, the Notes, and any other instruments, documents, or agreements to be delivered hereunder, are being executed and delivered and are intended to be performed in the State of Ohio and shall be in all respects interpreted in accordance with the laws of said State.

11. All covenants and agreements in this Security Agreement contained by or on behalf of any of the parties hereto shall bind and inure to the benefit of the respective successors and assigns of the parties hereto whether so expressed or not, except that Debtor shall not have the right to assign its rights hereunder or any interest herein without the prior consent of Secured Party.

The parties hereto have caused this Security Agreement to be duly executed by their respective duly authorized officers as of the day and year first above written.

SOUTH-EAST COAL SALES COMPANY

By: *D. H. Swanson, Chairman*

By: *Robert K. Moore, Pres.*
Debtor

THE CITY NATIONAL BANK & TRUST COMPANY
OF COLUMBUS, COLUMBUS, OHIO

By: *Philip C. Fisher, Loan Officer*
Secured Party

MORTGAGE OF RAILROAD ROLLING STOCK
(Security Agreement)

SOUTH-EAST COAL COMPANY, a corporation organized and existing under the laws of the State of Kentucky, located at Irvine (mailing, P.O. Box 332), Kentucky 40336 ("Mortgagor") and THE CITY NATIONAL BANK & TRUST COMPANY OF COLUMBUS, 100 East Broad Street, Columbus, Ohio 43215 ("Mortgagee"), in consideration of the mutual covenants and agreements contained herein, hereby Recite and Agree as follows:

Recitals

1. Acquisition of Units

Mortgagor has entered into an agreement of purchase ("the Purchase Agreement"), a copy of which will be furnished to Mortgagee simultaneously herewith, with Garrett Railroad Car & Equipment, Inc., a Pennsylvania corporation having its principal office and place of business in New Castle, Pennsylvania 16102, for the purchase of 297 railroad hopper cars specifically identified in Schedule 1 hereto and to be further identified, supplemented and added to from time to time by means of Supplemental Schedules in the form attached hereto as Schedule 2 (all of which cars and any other railroad rolling stock covered hereby, whenever acquired, together with all replacements, replacement parts, additions, repairs, repair parts, accessions and accessories incorporated therein and/or affixed thereto, all special tools and devices incorporated thereinto, and all replacements and substitutions thereof are hereinafter sometimes referred to collectively in the plural as "the Units" and in the singular as "Unit").

2. Agreement to Finance

Mortgagee has agreed, subject to and in compliance with the terms and conditions hereof and of a loan agreement of even date herewith ("the Loan Agreement") by and among Mortgagor, Mortgagee and South-East Coal Sales Company, a Kentucky corporation having its principal office and place of business at 88 East Broad Street, Columbus, Ohio 43215 ("Guarantor"), to make advancements to Mortgagor to finance its acquisition of the Units ("the Advancements").

3. Agreement to Secure Advances

Mortgagor and Guarantor have agreed to grant and have granted to Mortgagee security interests in certain collateral

Executed in 6 counterparts, of which
this is counterpart number 5.

described in paragraph 5 hereto (all called collectively, including the Units, "the Collateral") to secure the Advancements previously made and to be made by Mortgagee.

4. Mortgagor's Obligations

Mortgagor's obligations hereunder shall include the total unpaid amount of the Advancements, together with any and all future obligations and indebtedness of whatever kind and whenever created of Mortgagor to Mortgagee, including interest, whether or not given pursuant to commitment, direct or indirect, absolute or contingent, now existing or hereafter arising, all of which are covered by this Mortgage and are herein collectively called "the Obligations."

Agreements

5. Mortgage (Security) Interests

To secure payment and performance of the Obligations, Mortgagor grants to Mortgagee a continuing security interest in the following, and, if moved, sold, leased or otherwise disposed of, the proceeds thereof:

Whether now in existence or hereafter acquired, all of the following: The railroad rolling stock specifically identified in Schedule 1 hereto (to be further identified, supplemented and added to from time to time); together with all replacements, replacement parts, additions, repairs, repair parts, accessions and accessories incorporated therein and/or affixed thereto, all special tools and devices incorporated therinto or used in connection therewith; and together with all products, replacements, additions, substitutions and proceeds (including insurance payable by reason of loss or damage to the collateral) thereof.

6. Inspection, Selection and Delivery of Units

Mortgagor will inspect and select the Units under the terms of the Purchase Agreement and will take delivery thereunder. By inspecting, selecting and taking delivery of the Units, Mortgagor shall and does warrant to Mortgagee that each delivered Unit is in the condition, repair and of a value to be fully suitable for all purposes hereunder. Mortgagor will transport each Unit of which it takes delivery to its repair shop at

Irvine, Kentucky ("the Shop") for further inspection and repair as necessary to insure compliance herewith, all at Mortgagor's cost and expense.

7. Repairs, Alterations, Additions, Improvements and Expenses

At the Shop, and prior to other use of each Unit under Section 8 hereof, Mortgagor will mark in compliance with Schedule 2 and repair such Unit as necessary to insure compliance herewith and with all applicable laws, rules and regulations to which reference is made in Section 8 hereof and will obtain from the Louisville and Nashville Railroad an appropriate certificate reciting and evidencing such compliance.

During the effectiveness hereof, Mortgagor will make such repairs, alterations, additions and improvements as are or may be required from time to time to insure compliance herewith and with all laws, rules and regulations to which reference is made in Section 8 hereof. Without the prior written consent of Mortgagee, Mortgagor shall make no other alterations, additions or improvements to any Unit, unless such may be made without reduction of the value of that Unit below the amount which it would have been had no such alteration, addition or improvement been made, and without impairment to the condition and working order required hereby.

Mortgagor will keep each Unit in good repair, condition and working order and will furnish all parts, mechanisms and devices required to keep each Unit in good mechanical and working order and in compliance with the laws to which reference is made in Section 8 hereof. Mortgagee shall have no responsibility for any cost arising under this Section or for any expense arising out of or necessary for the operation and use of the Units, including but not limited to maintenance, repairs and replacement parts, storage, tolls, tariffs, fines, registration and insurance fees for all insurance required hereby.

8. Use and Standards of Use and Repair

Mortgagor will repair, keep in repair and use the Units in a careful and proper manner and will comply with and conform to and with all current and future federal, state, municipal, police and other laws, ordinances and regulations relating to the possession, use or maintenance of the Units. Mortgagor will comply and insure compliance with all rules, interpretations, codes and orders governing use, hire, condition, repair and all other matters interpreted as being applicable to the Units during the effectiveness hereof by and of the American Association of Railroads ("AAR") and any other organization, association, agency

or governmental authority, including the Interstate Commerce Commission and the Department of Transportation, which may during the effectiveness hereof be responsible for or have authority to promulgate such rules, interpretations, codes and orders. Mortgagor agrees to indemnify and hold Mortgagee safe and harmless from and against any and all claims, costs, expenses (including without limitation attorneys' fees), damages and liabilities claimed, arising from or pertaining to such laws, ordinances, regulations, rules interpretations, codes and orders.

It is understood that Mortgagor will use the Units in shipping its coal to various of its customers and that the Units, for that purpose, will be transported in interstate commerce by and upon property of various railroads and other entities operating in the continental United States only. Mortgagor will use the Units, and will require their use by any such railroads and other entities, only in whole trains or units thereof of not less than 20 Units each and will not permit separate use of the Units or use thereof for any purpose other than the carrying of Mortgagor's coal to its customers.

9. Supplemental Schedules and Identification

In compliance with the Loan Agreement, Mortgagor will prepare and submit to Mortgagee Supplemental Schedules in the form of Schedule 2 hereto. In addition, Mortgagor will affix to each Unit and maintain throughout the effectiveness hereof, labels, plates or other markings identifying the Units and Mortgagee's interest therein, including without limitation the marks and stencils recited in the Supplemental Schedules. Mortgagor agrees to join with Mortgagee in the execution of any documents and to pay all recording costs, fees and taxes associated therewith which Mortgagee may request to give evidence of Mortgagee's interest in the Units and Mortgagor agrees that Mortgagee may give notice of such interest to any and all of Mortgagor's creditors.

Notwithstanding the use of the Supplemental Schedules to better identify the Units, it is the intent of the parties hereto that Mortgagee's interests attach at the earliest time permitted by law.

10. Mortgagor's Additional Obligations

With respect to all of the Collateral (except only to the extent that the provisions of this Section are inconsistent with other sections hereof in respect of the Units), Mortgagor warrants and covenants:

(a) That Mortgagor will keep an accurate and complete record of the Collateral, separate and distinct from those of Mortgagor's other property, its disposition and the proceeds thereof and will permit Secured Party at any time and wherever located to examine and inspect such records and the Collateral;

(b) That, except for the security interest granted hereby and except for prior security interests granted to Mortgagee, Mortgagor is, and as to the Collateral acquired after the date hereof shall be, the owner of the Collateral, free and clear of any prior lien, security interest or encumbrance; that Mortgagor will defend the Collateral against the claims and demands of all persons at any time claiming the same or any interest therein; and that no mortgage, financing statement or agreement is on file in any public office pertaining to the Collateral, except for financing statements to Mortgagee;

(c) That without the prior written consent of Mortgagee, Mortgagor shall not part with the possession or control of the Collateral or sell, pledge, mortgage, encumber or otherwise transfer or dispose of, or attempt to sell, pledge, mortgage, encumber or otherwise transfer or dispose of any interest in all or any part of the Collateral and that Mortgagee's security interest in the proceeds of the Collateral, and/or notification of its interest in such proceeds in financing statements or otherwise, shall not be construed as modifying this Mortgage or as Mortgagee's consent to disposition of the Collateral other than as set forth herein; and

(d) That Mortgagor will keep the Collateral free from all claims, liens and legal process of creditors of Mortgagor, will pay all costs, expenses, fees, taxes and charges of any kind whatsoever arising by virtue of its ownership, possession or use of the Collateral; that Mortgagor shall keep the tangible items of the Collateral insured, at its own cost and expense, against all risk of loss or damage as are covered by endorsement commonly known as supplemental or extended coverage for an amount equal to the full replacement value thereof, but in no event less than the full amount of the Obligations; that such insurance shall name both Mortgagor and Mortgagee as insureds thereunder as their respective interests may appear, shall be placed with a company or companies satisfactory to Mortgagee, shall provide that all losses shall be adjusted with and paid to both Mortgagor and Mortgagee and shall be subject to alteration or cancellation only after 30 days' written notice to Mortgagor and Mortgagee; that Mortgagor will deliver to Mortgagee certificates or memoranda of such insurance within 10 days of the date hereof and renewals of such policy or policies at least 15 days prior to the expiration date(s) thereof, said renewals to be marked "paid" by the issuing

company or agent; that receipt by Mortgagee of any information under this Section shall not be construed as an acceptance of the adequacy of the insurance required hereby; and, that any insurance payable by reason of loss or damage to the Collateral is proceeds hereunder; and

(e) That at Mortgagee's request, Mortgagor will join with Mortgagee in executing such documents, including financing statements or amendments thereto, as Mortgagee in its discretion may from time to time deem necessary or desirable in order to comply with applicable law or to preserve and protect the security interest provided for hereby; that Mortgagor will pay all costs and expenses, including recording fees and taxes, of filing all documents and instruments required and requested by Mortgagee hereunder; that in the event that any of the Collateral is subject to the claim of another security interest, if requested by Mortgagee at any time prior to the termination hereof, Mortgagor will obtain at its expense and deliver to Mortgagee a statement of account or a list of the Collateral approved or corrected by the person claiming such other security interest; and that, in order to perfect and protect purchase money security interests in the Collateral, Mortgagee may, and hereby is authorized by Mortgagor to, give such notice to other creditors of Mortgagor as may be necessary under applicable law or deemed desirable by Mortgagee; and,

(f) That Mortgagor will indemnify and save harmless Mortgagee from any charge, claim, proceeding, judgment, loss, expense (including attorneys' fees) or liability which in any manner or from any cause arises in respect or on account of the repair, possession, operation or other use of any of the Collateral and Mortgagee will give Mortgagor prompt notice of any event contemplated by this Section and known to it to have occurred.

11. Loss or Damage

In the event of damage to or loss of any of the Collateral, with respect to that Collateral, Mortgagor will place the Collateral in the repair, condition and working order required hereby or replace the same with like equipment in the repair, condition and working order which the replaced Collateral was prior to the damage or loss. If the loss or damaged Collateral was one or more of the Units, the substituted Unit(s) will be described in a Supplemental Schedule to be delivered to Mortgagee under the provisions of Section 9 hereof.

All proceeds of insurance payable for any such damage or loss, and any and all payments for such damage or loss payable to Mortgagor by any third party (for example, a railroad) or its insurer, shall be proceeds of the Collateral and shall be used only for replacement or repair of the Collateral, except that, if Mortgagor is in default hereunder, Mortgagee may, and hereby is authorized by Mortgagor to, direct any party owning such payment to make the same to Mortgagee directly, to be applied against the Obligations in compliance herewith.

12. Assignment

Mortgagor will not sell, assign, sublet, pledge, hypothecate or otherwise encumber or suffer a lien upon or against any interest in this Mortgage without Mortgagee's prior written consent. Mortgagee may assign this Mortgage or any right and title it has hereunder upon written notice thereof to Mortgagor and such assignment shall be on terms and conditions not inconsistent herewith.

13. Opinion of Counsel

Prior to DECEMBER 24, 1975, and at any time or times thereafter upon Mortgagee's request, Mortgagor will deliver to Mortgagee an opinion of counsel making specific reference to this Mortgage and satisfactory to Mortgagee and to Mortgagee's counsel to the effect that:

(a) Mortgagor is a corporation duly organized, validly existing and in good standing under the laws of the State of Kentucky, has corporate and legal power and has taken all corporate and legal actions requisite to enter into this Mortgage; and

(b) This Mortgage has been duly executed by Mortgagor and constitutes the legal, valid and binding obligation of Mortgagor, enforceable in accordance herewith; and

(c) Neither Mortgagor nor its opining counsel know of any reason suggesting that any person other than Mortgagee may claim a lien, charge or encumbrance upon or title to any of the Units in Mortgagor's possession, when occurring; and

(d) Neither Mortgagor nor its opining counsel know of any requirement for recording, filing, or depositing this Mortgage, or any information hereon, other than with the Interstate Commerce Commission in compliance with 49 United States Code § 20c and regulations thereunder, which is necessary to preserve or protect Mortgagee's or its assignees' title to and interest in the Units; and

(e) Neither Mortgagor nor its opining counsel know of any requirement for recording, filing or depositing financing statements, in the form or forms to be approved in said opinion, to perfect Mortgagee's or its assignees' interests in the Collateral other than the Units except with the Secretary of State and the Records of Franklin and Cuyahoga Counties, Ohio, and except with the County Court Clerks of Estill, Letcher, Knott and Johnson Counties, Kentucky.

(f) No federal or state governmental, administrative or judicial authorization, consent or approval is requisite to Mortgagor's execution hereof or performance hereunder; and

(g) No litigation or administrative proceedings are pending or, to the knowledge of Mortgagor and its counsel, are threatened against Mortgagor, the adverse determination of which would affect the validity of this Mortgage or Mortgagee's rights hereunder.

In addition, each delivery to Mortgagee of a Supplemental Schedule hereunder shall be accompanied by an additional opinion of counsel in the form required by this Section stating that all previous opinions given hereunder remain valid and in effect and that filing under 49 U.S.C. § 20c of the accompanying Supplemental Schedule will perfect in Mortgagee a first and best lien in the Units identified therein.

If at any time or times when this Mortgage is in effect any opinion under this Section, or any item contained therein, or any fact upon which the same is based, changes, Mortgagor and its counsel will give Mortgagee immediate notice thereof.

14. Default

Mortgagor shall be deemed to be in default hereunder in the event that (a) Mortgagor shall fail to make any note payment within 10 days after notice from Mortgagee that such payment has not been made when due; or (b) Mortgagor shall fail to make any other payment or perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder or under the Loan Agreement and such failure shall continue unremedied for a period of 15 days after notice thereof by Mortgagee or (c) any representation, opinion or warranty made by Mortgagor herein or in any document or certificate furnished Mortgagee in connection herewith or with the Loan Agreement or pursuant hereto or thereto shall prove to be incorrect at any time in any material respect; or (d) Mortgagor shall become insolvent or bankrupt or make an assignment for the benefit of creditors or consent to the appointment of a trustee or receiver, or a trustee or a receiver shall be appointed for Mortgagor or for a substantial part of its property without its consent and shall not be dismissed for a period of 30 days, or bankruptcy, reorganization or insolvency proceedings shall be instituted by or against Mortgagor and, if instituted against Mortgagor, shall not be dismissed for a period of 30 days.

15. Remedies of Mortgagee

In the event of default hereunder or at any time Mortgagee in good faith believes that the prospect of payment or performance owing to it hereunder or under the Loan Agreement is impaired, Mortgagee may then, or at any time thereafter (such default not having previously been cured), declare all of the Obligations secured hereby to be immediately due and payable, without notice

or demand therefor, and shall then have all the remedies of a secured party under the laws of the State of Ohio, or any other applicable laws, including, without limitation, the right to take possession of the Collateral, and for that purpose Mortgagee may require Mortgagor to make the Collateral available to Mortgagee at a place to be designated by Mortgagee reasonably convenient to both parties and may, so far as Mortgagor can give authority therefor, enter upon any premises on which the Collateral or any part thereof may be situated and remove the same therefrom, and Mortgagor hereby waives and releases Mortgagee of and from any and all claims in connection with such removal.

After Mortgagee takes or receives possession of the Collateral following default hereunder, whether the same remains on premises of Mortgagor or otherwise, Mortgagee may sell, lease or otherwise dispose of the Collateral in any manner permitted by law, and if such notice is required by law, Mortgagee will give Mortgagor written notice of the time and place of any public sale of the Collateral or of the time after which any private sale or other intended disposition thereof is to be made, and at any such public or private sale Mortgagee may purchase all or any part of the Collateral. The parties hereto agree that notice under this paragraph shall not be unreasonable as to time if given in compliance herewith 20 days prior to sale or other disposition.

To the extent permitted by applicable law, Mortgagor hereby waives any rights for or hereafter conferred by statute or otherwise which may require Mortgagee to sell, lease or otherwise use any Collateral in mitigation of Mortgagee's damages as set forth in this Section or which may otherwise limit or modify any of Mortgagee's rights or remedies under this Section. However, in making the waivers of this paragraph, Mortgagor does not waive its right to any notice of sale of collateral and does not waive any claim or defense based upon the allegation that Mortgagee has failed to dispose of any collateral in a commercially reasonable manner.

Mortgagor shall pay to Mortgagee, on demand and as part of the Obligations hereunder, all costs and expenses, including court costs, legal expenses and reasonable attorneys' fees, incurred by Mortgagee in exercising any of its rights or remedies hereunder or enforcing any of the terms, conditions or provisions hereof.

16. Concurrent Remedies

No right or remedy of Mortgagee hereunder shall be exclusive of any other remedy herein or by law provided; each right or remedy shall be cumulative in addition to every other right or remedy and, in addition, the exercise of any remedy by Mortgagee

of all provisions hereof or of an intent by Mortgagee to terminate all the provisions hereof. Moreover, a failure of Mortgagee to insist upon strict compliance with the terms hereof or to assert any right or remedy hereunder shall not be a waiver of any default and shall not be determined to constitute a modification of the agreements of the parties hereto or the terms hereof or to establish any claim or defense. Any waiver of any right or remedy of Mortgagee hereunder must be contained in writing signed by Mortgagee.

17. Mortgagee's Payment -- Late Payment

In the event that Mortgagor should fail duly and promptly to perform any of the things required to be performed hereunder, Mortgagee may, at its option, immediately or at any time thereafter, perform the same for the account of Mortgagor without thereby waiving any default, and any amount paid or expenses or liability incurred by Mortgagee in such performance, together with interest thereon until paid at the rate of 15 percent per annum, or the highest lawful rate of interest, whichever is lesser, shall be payable to Mortgagee by Mortgagor on demand and shall be and become part of the Obligations secured hereunder.

In the event that any amount due and payable Mortgagee from Mortgagor remains overdue for more than 15 days, Mortgagor shall pay Mortgagee hereunder on demand and as part of the Obligations interest on such amount from the date payable to the date of actual payment at the rate of 15 percent per annum, or the highest lawful rate of interest, whichever is lesser.

18. Applicable Law

Mortgagee, Mortgagor and Guarantor agree that the law of the State of Ohio shall govern their rights and duties hereunder, excepting applicable federal law and except only to the extent precluded by other states' law of mandatory application. ANY ACTION, SUIT OR PROCEEDING IN RESPECT OF OR ARISING FROM OR OUT OF THIS MORTGAGE, ITS MAKING, VALIDITY OR PERFORMANCE, SHALL BE PROSECUTED AS TO ALL PARTIES AND THEIR SUCCESSORS AND ASSIGNS AT COLUMBUS, OHIO. EACH PARTY HERETO CONSENTS TO AND SUBMITS TO THE EXERCISE OF JURISDICTION OVER ITS PERSON BY ANY COURT SITUATED AT COLUMBUS, OHIO, AND HAVING JURISDICTION OVER THE SUBJECT MATTER. Mortgagor and Guarantor each hereby irrevocably appoints and designates E. George Bellows, whose address is 100 East Broad Street, Columbus, Ohio 43215, or any other person whom Mortgagee, after giving Mortgagor or Guarantor five days' written notice thereof may appoint, as its true and lawful attorney in fact and duly authorized agent for service of legal process and agrees that service of such process upon such party shall constitute personal service of such process upon Mortgagor or Guarantor, as the case may be. Such attorney in fact, within five days after receipt of such process, shall forward the same, by certified or registered mail, together with all papers

affixed thereto, to Mortgagor or Guarantor at its address as set forth herein.

19. Notices

Any notice, request or demand given or required to be given hereunder, shall, except as expressly otherwise provided herein, be in writing and shall be determined to have been given when mailed by United States registered or certified mail, return receipt requested, postage prepaid, to the other party hereto at the address of such party as stated herein. Either party hereto may at any time change its address for notification purposes by mailing, as aforesaid, a notice stating the change and setting forth the new address.

20. Miscellaneous Provisions

Unless otherwise specifically provided herein, the Obligations of Mortgagor hereunder shall not be contingent or executory and shall continue notwithstanding termination hereof or the exercise by Mortgagee of any right or remedy hereunder.

Upon satisfaction of all the Obligations and after receiving Mortgagor's written request, Mortgagee shall have 20 working days in which to furnish any termination statement required by law.

The titles to the various sections of this Mortgage are solely for convenience and are not a part of the Mortgage for purposes of interpreting the provisions hereof.

Unless otherwise specified, the terms "herein," "hereunder," "hereto," "herewith" and words of similar import refer to this entire Mortgage.

This written Mortgage is exclusive as to its subject matter and no inconsistent oral agreement shall be binding.

IN WITNESS WHEREOF, the parties hereto have caused this Mortgage to be executed by their duly authorized representatives at Columbus, Ohio, as of the 23rd day of DECEMBER, 1975.

(SEAL)

SOUTH-EAST COAL COMPANY

Signed and acknowledged in the presence of:

Ray L. Sanders
Ray L. Sanders

By R. H. [Signature]

Its [Signature]

MORTGAGOR

Signed and acknowledged in
the presence of:

Ray T. Oy
Karl Sanders

(SEAL)

Ray T. Oy
Karl Sanders

THE CITY NATIONAL BANK & TRUST
COMPANY OF COLUMBUS

By [Signature]
Its [Signature]

MORTGAGEE

SOUTH-EAST COAL SALES COMPANY

By [Signature]
Its PRESIDENT

GUARANTOR

GUARANTY
(Of Obligations Under Mortgage of Railroad Rolling Stock)

THIS GUARANTY is made this 23rd day of DECEMBER, 1915, by the undersigned, hereinafter called "Guarantor," to and for the benefit of The City National Bank & Trust Company of Columbus, a national banking association organized and existing by virtue of the laws of the United States and having its principal office and place of business at 100 East Broad Street, Columbus, Ohio 43215, hereinafter called "Mortgagee."

IN CONSIDERATION of the mutual covenants and agreements hereinafter set forth, including without limitation loans made and to be made by Mortgagee and indebtedness to Mortgagee of South-East Coal Company, a Kentucky corporation having its principal office and place of business in Irvine, Kentucky 40336, hereinafter called "Mortgagor," evidenced and to be evidenced in part by promissory note or notes made by Mortgagor from time to time, hereinafter individually and collectively called "the Note," pursuant to a Loan Agreement of even date herewith by and among Mortgagee, Mortgagor and the undersigned and secured by a Mortgage of even date herewith by and between Mortgagor and Mortgagee hereinafter called "the Mortgage," Guarantor, for the purpose of inducing Mortgagee to make the loans aforesaid, hereby warrants, covenants and agrees as follows:

1. Guarantor hereby agrees to enter into the Mortgage together with Mortgagor and, to the extent of its possession or control of any of the Collateral (as defined therein), as a mortgagor or debtor thereunder.

2. Guarantor unconditionally and absolutely guarantees the due and punctual payment of the Note, any interest thereon and any other monies due or which may become due thereon, and the due and punctual performance and observance by Mortgagor of all the other terms, covenants and conditions of the Note, the Mortgage, the said Loan Agreement and all other documents executed in connection with said loans, whether according to the present terms thereof, at any earlier or accelerated date or dates as provided therein, or pursuant to any extension of time or to any change or changes in the terms, covenants and conditions thereof now, or at any time hereafter, made or granted.

3. Guarantor hereby waives diligence, presentment, protest, notice of dishonor, demand for payment, extension of time for payment, notice of acceptance of this guaranty, notice of nonpayment at maturity or otherwise, notice of indulgences and notices of every kind, and consents to any and all forbearances and extensions of the time of payment of the Note, and to any and all

changes in the terms, covenants and conditions thereof hereafter made or granted and to any and all substitutions, exchanges or releases of all or any part of the collateral therefor; it being the intention hereof that Guarantor shall remain liable until such amount of principal of the Note, with interest, and any other sums due or to become due thereon or under the Mortgage or any other agreement, shall have been fully paid and the terms, covenants and conditions shall have been fully performed and observed by Mortgagor, notwithstanding any act, commission or thing which might otherwise operate as a legal or equitable discharge of Guarantor.

4. Guarantor agrees that it shall have no right of subrogation whatsoever with respect to the aforesaid indebtedness, or to any monies due or paid thereon or any collateral securing the same unless and until Mortgagee shall have received full payment of all sums at any time evidenced by the Note and/or secured by the Mortgage.

5. Guarantor agrees that this Guaranty may be enforced by Mortgagee without first resorting to or exhausting any other security or collateral or without first having recourse to the Notes or any of the property covered by the Mortgage through foreclosure proceedings or otherwise; however, nothing contained herein shall prevent Mortgagee from instituting and maintaining suit on the Notes, or any one of them, foreclosing or causing to be foreclosed the lien(s) of the Mortgage or from exercising any other rights hereunder, and if such foreclosure or other remedy is availed of only the net proceeds therefrom, after deduction of all charges and expenses of every kind and nature whatsoever, shall be applied for reduction of the amount due on the Notes or under the Mortgage, and Mortgagee shall not be required to institute or prosecute proceedings to recover any deficiency as a condition of payment hereunder or of enforcement hereof. At any sale of the security or collateral for the indebtedness of Mortgagor or any part thereof, whether by trustee's sale, sale by a court of competent jurisdiction, foreclosure or otherwise, Mortgagee may at its discretion purchase all or any part of such collateral so sold or offered for sale for its own account and may apply the amount bid therefor against the balance due it pursuant to the terms of the Notes and the Mortgage.

6. Guarantor agrees that this Guaranty shall inure to the benefit of and may be enforced by Mortgagee and any subsequent holder or holders of the Notes, and the Mortgage and shall be binding upon and enforceable against Guarantor and Guarantor's legal representatives, successors and assigns.

7. Any one or more successive and/or concurrent actions may be brought hereon against Guarantor, or any one of them if more than one, either in the same action, if any, brought against Mortgagor, the then owner of the collateral securing the Notes, and/or any other party, or in separate actions, as often as the legal holder or holders of the Notes, in its or their sole discretion may deem advisable.

IN WITNESS WHEREOF, SOUTH-EAST COAL SALES COMPANY, Guarantor, has caused this Guaranty to be executed by its duly authorized representative on the day and year first aforesaid.

(SEAL)

SOUTH-EAST COAL SALES COMPANY

Signed and acknowledged
in the presence of:

Robert T. Og
Kay L. Sanders

By *Philip F. Minick*
Its *- PRESIDENT*

SCHEDULE 1

To Mortgage of Railroad Rolling Stock
Dated DECEMBER 23, 1975

Description of Equipment (Units):

<u>Type</u>	<u>ARR Mechanical Designation</u>	<u>Number of Units</u>	<u>Identifying Marks</u>	<u>Road or Serial Numbers</u>
41'8"-70 ton hopper cars	HT	234*	P&LE	Various within series numbered 68,000 thru 74,000

*Included in the property covered by the aforesaid mortgage is rolling stock used or intended for use in connection with interstate commerce, or interests therein, owned by South-East Coal Company at the date of said mortgage or thereafter acquired by it or its successors and to be remarked with its reporting marks, "SECX."

41'8"-70 ton hopper cars	HT	60	SECX	773306	77291
				773385	76842
				772937	77354
				769583	77390
				773666	76841
				773997	77056
				768808	77199
				772488	77224
				772759	77275
				773231	77294
				773362	77109
				773777	77212
				774012	77234
				772501	76877
				772852	77349
				774041	76957
				773397	77112
				773787	77219
				774010	77242
				772532	7729
				768007	77199
				768953	77199
				768780	77219
				769718	77246
				769805	77299
				769888	77338
				770279	77371
				770882	77388
				770941	7739
				771980	77395

<u>Type</u>	<u>ARR Mechanical Designation</u>	<u>Number of Units</u>	<u>Identifying Marks</u>	<u>Road or Serial Numbers</u>
41'8"-70 ton hopper cars	HT	61	SECX**	668535 77300 669059 77303 770150 77309 771188 77320 771214 77325 771302 77327 771312 77331 771376 77340 771399 77343 771423 77347 771481 77354 771714 77358 771725 77359 771759 77367 771878 77370 771930 77370 772029 77372 772065 77373 772133 77373 772262 77375 772289 77386 772496 77387 772499 77388 772654 77392 772670 77394 772708 77395 772781 77404 772789 77404 772836 772839 772851 772902 772948

**Each Unit will have marked or stenciled on each side in letters not less than one inch in height the following:

THE CITY NATIONAL BANK & TRUST COMPANY OF
COLUMBUS, MORTGAGEE. MORTGAGE RECORDED UNDER
SECTION 20c OF THE INTERSTATE COMMERCE ACT.

SUPPLEMENTAL SCHEDULE NO. _____

Referenced Document: Mortgage of Railroad Rolling Stock dated _____, 1975, recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. §20c on _____, 1975, Recordation No. _____.

Mortgagor: South-East Coal Company
Irvine, Kentucky 40336

Guarantor: South-East Coal Sales Company
88 East Broad Street
Columbus, Ohio 43215

Mortgagee: The City National Bank & Trust Company
of Columbus
100 East Broad Street
Columbus, Ohio 43215

A D D

Description of Equipment (Units):

<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Number of Units</u>	<u>Identifying Marks*</u>	<u>Road or Serial Numbers</u>
41'8"-70 ton hopper cars	HT		SECX	

*Each Unit will have marked or stenciled on each side in letters not less than one inch in height the following:

THE CITY NATIONAL BANK & TRUST COMPANY
OF COLUMBUS, MORTGAGOR. MORTGAGE RECORDED
UNDER SECTION 20c OF THE INTERSTATE COMMERCE
ACT.

Approved and agreed to this _____ day of _____,
197__, as a Supplemental Schedule to the Mortgage by and among THE
CITY NATIONAL BANK & TRUST COMPANY OF COLUMBUS, SOUTH-EAST COAL
COMPANY AND SOUTH-EAST COAL SALES COMPANY (as Guarantor) dated the
_____ day of _____, 1975, and hereby made a part of that
Mortgage.

Signed and acknowledged in
in the presence of:

(SEAL)

(SEAL)

THE CITY NATIONAL BANK & TRUST
COMPANY OF COLUMBUS

By _____

Its _____

MORTGAGEE

SOUTH-EAST COAL COMPANY

By _____

Its _____

MORTGAGOR

SOUTH-EAST COAL SALES COMPANY

By _____

Its _____

GUARANTOR

STATE OF OHIO,
COUNTY OF FRANKLIN, ss:

I do hereby certify that on the 23rd day of DECEMBER, 1975, before me, the subscriber, a notary public in and for said County, personally appeared PHILIP C. PARICER, to me personally known, who being duly sworn, says that he is the LOAN OFFICER of The City National Bank & Trust Company of Columbus, that said instrument was signed on behalf of said association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association for the purposes therein stated.

(SEAL)

Kay L. Sanders
Notary Public

My commission expires _____

STATE OF OHIO,
COUNTY OF FRANKLIN, ss:

I do hereby certify that on the 23rd day of DECEMBER, 1975, before me, the subscriber, a notary public in and for said County, personally appeared DAVID H. SWANSON, to me personally known, who being duly sworn, says that he is the Vice President of South-East Coal Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation for the purposes therein stated.

(SEAL)

Kay L. Sanders
Notary Public

My commission expires _____

STATE OF OHIO,
COUNTY OF FRANKLIN, ss:

I do hereby certify that on the 23rd day of December, 1975, before me, the subscriber, a notary public in and for said County, personally appeared KEITH F. MEZDRICK, to me personally known, who being duly sworn, says that he is the President of South-East Coal Sales Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation for the purposes therein stated.

(SEAL)

Ray L. Sanders
Notary Public

My commission expires _____

Schedule 2

THIS AGREEMENT with respect to the purchase and sale of coal, made and entered into this 30th day of June, 1978, by and between KENTUCKY UTILITIES COMPANY, a Kentucky corporation having its principal office and place of business at 120 South Limestone Street, Lexington, Kentucky, hereinafter referred to as the "PURCHASER", party of the first part, and SOUTH EAST COAL COMPANY, a Kentucky corporation having its principal office and place of business at Irvine, Kentucky, hereinafter referred to as the "SELLER", party of the second part,

W I T N E S S E T H :

THAT, WHEREAS, the Purchaser is an electric utility company owning and operating electric power generating facilities that require large quantities of coal of the quality provided in this Agreement, and

WHEREAS, the Seller is in the business of mining coal by underground methods in Eastern Kentucky and now owns or otherwise controls certain lands and mineral interests in Knott, Letcher and Perry Counties, Kentucky, which lands contain substantial quantities of coal of the quality herein provided, from which Seller desires to mine and sell coal to Purchaser under the terms of this Agreement, and

WHEREAS, the Seller also owns and operates certain coal processing facilities and coal loading facilities at or near Calla, in Estill County, Kentucky, which facilities are capable of providing the processing and fast loading capabilities necessary to

provide the coal and deliveries required under the terms of this Agreement,

NOW, THEREFORE, it is hereby agreed by and between the parties hereto as follows:

1.01 MUTUAL OBLIGATIONS. Seller hereby agrees to mine and sell coal to Purchaser, and Purchaser hereby agrees to buy coal from Seller, upon the terms and conditions and in the quantities hereinafter provided.

2.01 SELLER'S RESERVES AND PRODUCTION CAPABILITIES. Seller represents and warrants that coal reserves and mineral interests now owned by Seller contain economically recoverable coal of a quality and in quantities which, under present mining laws and practices, will be sufficient to satisfy all the requirements of this Agreement. Seller further represents and warrants that it now owns, or will proceed to develop and construct, such mines, processing facilities and loading facilities as may be necessary to comply with all of the terms of this Agreement and to put Seller in position to comply with the scheduled deliveries of coal herein provided. Seller will, at all times while this Agreement remains in effect, maintain sufficient coal reserves and production capability to comply with the terms of this Agreement.

3.01 TERM OF AGREEMENT. The effective date of this Agreement shall be July 1, 1978. The primary term of this Agreement shall be twelve (12) years and six (6) months from and after July 1, 1978, subject to the provisions hereinafter contained for earlier termination. In addition to the primary term, Purchaser

shall have the option to extend the term of this Agreement for up to two (2) successive terms of five (5) years each, unless the term of this Agreement has been terminated under the further provisions hereof. The first such option may be exercised at the expiration of the primary term, and the successive option at the expiration of the preceding extended five-year term. The right to extend this Agreement for the first and subsequent extended terms is conditioned upon negotiation of a mutually agreeable base price for the first or subsequent extended terms. If the parties cannot mutually agree on a base price for an extended term, then this Agreement shall terminate and Purchaser shall not have any further rights or options hereunder.

Each option shall be exercised by Purchaser giving Seller one year's written notice prior to the expiration of the then present term of the contract. Upon receipt by Seller of such written notice, Purchaser and Seller shall proceed in good faith to negotiate a mutually acceptable base price for the next five-year option term. If a mutually agreeable base price is negotiated, a supplement to this agreement setting forth the base price negotiated for such five-year term shall be executed by the parties. Unless amended by the parties in writing, all other terms of this Agreement shall apply to such option term.

3.02 QUANTITY REQUIREMENTS. For the period commencing July 1, 1978, and extending through December 31, 1981, subject to the provisions in paragraph 5.01, Seller will tender for delivery and Purchaser will buy from Seller, at the price and upon the terms

and conditions hereinafter provided, the following number of tons of acceptable coal:

<u>During the Period</u>	<u>Total Period Tons</u>	<u>Average Monthly Tons</u>
July 1, 1978 through Jan. 31, 1979	140,000	20,000
Feb. 1, 1979 through Aug. 31, 1979	210,000	30,000
Sept. 1, 1979 through Mar. 31, 1980	280,000	40,000
April 1, 1980 through Oct. 31, 1980	350,000	50,000
Nov. 1, 1980 through May 31, 1981	420,000	60,000
June 1, 1981 through Dec. 31, 1981	490,000	70,000

For the period commencing January 1, 1982, and extending through December 31, 1990, Seller will tender for delivery and Purchaser will buy from Seller in each calendar year One Million (1,000,000) tons of acceptable coal at the price and upon the terms and conditions hereinafter provided. Deliveries of the quantities of coal provided herein shall be made as nearly ratably on a monthly basis as is practicable from the standpoint of the operations of both Seller and Purchaser. During any extension of this Agreement under the options provided for Purchaser, Seller will tender for delivery and Purchaser will buy from Seller in each calendar year of such extended term One Million (1,000,000) tons of acceptable coal at the price and upon the terms applicable to such extended term, to be delivered ratably on a monthly basis as nearly as is practicable from the standpoint of the operations of both Seller and Purchaser. --

"Acceptable coal" as used in this paragraph means coal meeting the specifications for coal subject hereto as set forth in paragraph

6.01 hereof. "Ton" as used in this Agreement shall mean a ton of two thousand (2,000) pounds avoirdupois weight.

Interim
1,890,000
40
1,930,000

1-1-82 - 12-31-90
11 m. tons year
x 9 years
9 m m tons
\$40
360,000 tons

4.01 BASE PRICE PER TON OF COAL. The base price to be paid by Purchaser to Seller for each ton of coal (of the quality specified in paragraph 6.01 hereof) delivered under the terms of this Agreement shall be \$43.76 per ton, f.o.b. barge at the Ghent unloading facility of Purchaser now located at or near its electric generating facility at Ghent, Kentucky. It is understood that this Base Price includes any washing or other processing or quality control work at the mines or at Seller's processing plant at Calla, necessary to meet the quality specifications herein provided, any royalties which Seller must pay with respect to such coal, and freight from Calla to Ghent (including milling in transit charges, rail rates from Calla to Wilder, Kentucky, transloading charges at Wilder, barge rates from Wilder to Ghent and equipment costs for transportation equipment owned by Seller and used in the shipment of such coal from mine mouth to point of delivery into barges at Wilder, Kentucky). The base price shall be adjusted from time to time in accord with the provisions of paragraphs 4.02 through 4.10, inclusive, of this Agreement. The base price is further subject to the adjustments provided for in this Agreement.

4.02 ADJUSTMENTS TO BASE PRICE-GENERAL. The base price of \$43.76 per ton, provided in paragraph 4.01 hereof, consists of

the following:

Fixed Costs
Slk labor Com 1.52
Coal Admin 1.02
Post & 3.09
Centrif. Services 75
5.88

Coal Components

1) Labor	\$15.98
2) Machinery and Supply	12.09
3) Fixed cost	5.88
4) Royalty	2.41
5) Severance Tax	1.64
Total Coal Components	

avg selling price \$36.54

To compare
 38.00
 + 52
 39.09
 \$38.00 ✓

6-30-78
Total operating Costs 28,640,000
includes interest?
935,000
330.63 per ton

-5-
36 to 37 under present sales

Compared to present costs 7 # + 20-11 cost of coal?
costs - de rec, int, sl - many dead

B. Transportation Components

1) Railroad Equipment	\$.92	
2) Milling in Transit.	.50	
3) Freight Rate	2.84	
4) Dumping	.90	
5) Barge Rate	.60	
Total Transportation Components		<u>5.76</u> ✓
Total Base Price Per Ton		\$43.76 ✓

The Base Price provided in paragraph 4.01, and all components thereof, shall be subject to adjustment as hereinafter provided. Adjustments made to the base price in computing the billing price for coal delivered and sold hereunder shall be made to the nearest one-tenth of a cent per ton. No dispute concerning price adjustment shall in any way relieve either party of its respective obligations of performance under this Agreement at the then existing billing price until any dispute over price adjustment is resolved. Seller shall promptly notify Purchaser of any adjustment to the base price as soon as practicable after the happening of any event which, under the terms of this Agreement, would cause an increase or decrease in the billing price for coal sold and delivered hereunder. Except with respect to price adjustments involving severance or other taxes or governmentally retrospectively imposed fees, royalties, retrospective premiums or costs of Workmen's Compensation or black lung compensation, retrospective governmental impositions and matters of like category (including amounts which are assessed for past obligations by governmental bodies), no adjustment of the base price shall be effective with respect to coal

shipped more than six (6) months prior to the date Purchaser receives notice of such adjustment. b not
pos

4.03 ADJUSTMENTS FOR CHANGES IN LABOR COSTS. him to line This Agreement, and the base price provided in paragraph 4.01 hereof, is based on the July 1, 1978 labor related costs of Seller of \$15.98 per ton incurred in the mining and processing of No. 4 seam coal (the Base Labor Cost Component), which costs include (a) the wages and salaries of hourly and salaried employees utilized in the production, preparation and handling of coal, including supervisory and administrative wages and salaries; (b) pension and welfare costs for hourly and salaried employees; (c) workmen's compensation insurance costs, social security and other forms of compulsory insurance, employment and payroll taxes; and (d) the cost of employee fringe benefits, such as vacation pay, hospitalization or health insurance and the like. Such costs, together with like or similar categories of costs which are now, or may be experienced or imposed hereafter, are referred to herein, and deemed to be, labor related costs in the labor cost component of the price for coal sold and delivered under this Agreement.

The Base Labor Cost Component (BLCC) of the base price hereunder shall be increased or decreased from time to time, as the case may require, to reflect changes after July 1, 1978 in the labor related costs of Seller incurred in the mining and processing of No. 4 seam coal resulting from any cause whatsoever, including, but not limited to:

(a) Changes in wage or salary scales of hourly and salaried employees, vacation pay, holiday pay, shift differentials, payments to welfare and/or pension funds, payroll taxes, and other fringe benefits;

(b) Compliance with the provisions of any law, regulation or order which directly affects, or indirectly affects, the labor costs incurred in producing, processing and handling of coal sold hereunder.

In the event and whenever a change occurs in the labor related costs of Seller, Seller shall compute the per ton amount of the decrease or increase of such labor related costs and shall promptly notify the Purchaser in writing of such change. Such written notice shall include a description of the factor or factors responsible for such change, an explanation of the manner in which such costs have been affected and the details of the computations used in determining the per ton amount of such change. The Base Labor Cost Component of the base price herein provided, and the billing price for coal sold hereunder, shall be decreased or increased, as the case may be, to reflect such change in labor related costs of Seller, as of the date on which such change occurred and the billing price for all coal delivered on or after the date on which such change occurred shall be adjusted to reflect such change in labor related costs. Seller, at all times during the primary and any extended term of this Agreement, shall exercise diligence in the operation of its coal producing and coal processing properties to efficiently produce and process coal and to

maintain under such circumstances and mining conditions as may from time to time exist, productivity at as high a level as practicable.

4.04 ADJUSTMENTS FOR CHANGES IN MACHINERY AND SUPPLY - Oct 1 - April

COSTS. This Agreement, and the base price provided in paragraph 4.01 hereof, is based on the July 1, 1978 cost to Seller of machinery and supplies of \$12.09 per ton incurred in the mining and processing of No. 4 seam coal (the Base Machinery and Supply Cost Component). The Base Machinery and Supply Cost Component (BMSCC) of the base price provided herein, and the billing price for all coal sold and delivered hereunder, shall be adjusted as of the first day of October and April of each year during the term of this Agreement, and any extended term hereof, to reflect a then Current Machinery and Supply Cost Component (CMSCC) in accord with the following formula:

$$\text{CMSCC} = \text{BMSCC} \times \frac{\text{CMSI}}{\text{BMSI}}, \text{ where:}$$

CMSCC is the Current Machinery and Supply Cost Component;

BMSCC is the Base Machinery and Supply Cost Component;

CMSI is the Current Machinery and Supply Index, to-wit, the weighted average of the following index numbers (Index of Wholesale Prices for Industrial Commodities published by the U. S. Department of Labor, Bureau of Statistics) as of the previous June (in the case of the October 1 calculation) and as of the previous December (in the case of the April 1 calculation):

35.0% of No. 1192 index number (mining machinery and equipment)

5.0% of No. 1144-0221 index number (belt conveyor) -

6.5% of No. 0543-1617 index number (industrial power - East South Central)
10.5% of No. 1013-02 index number (finished steel)
2.0% of No. 1026 index number (wire and cable)
2.0% of No. 1173 index number (electrical - i.e., motor, generator, etc.)
4.5% of No. 1143 index number (fluid power equipment)
8.0% of No. 1081-0141 index number (roof bolt)
3.5% of No. 0812 index number (hardwood lumber)
5.0% of No. 0576 index number (finished lubricant)
3.0% of No. 132 index number (concrete ingredient)
15.0% of industrial commodities index number

BMSI is the Base Machinery and Supply Index of 213.066, and is the weighted average of the above Index of Wholesale Price index numbers as of December, 1977, as reflected on Exhibit "A" annexed hereto.

Seller shall calculate and furnish to Purchasers as soon as practicable after the first of October and April in each year of the term of this Agreement, and any extension thereof, the amount of the adjustment to the billing price for each ton by reason of the calculation of the then Current Machinery and Supply Cost Component and such adjustment to the billing price shall apply to all coal delivered hereunder on and after the 1st day of each such October and April.

In the event of the unavailability of any of the indices herein mentioned, the parties hereto shall substitute by agreement the most nearly comparable index available, and in lieu of such agreement, the unavailable index numbers shall be omitted

from the weighting calculation and the weighting percentages adjusted pro rata to the remaining proportion of each in calculating the Current Machinery and Supply Cost Component on each date thereafter on which such a calculation is provided herein as long as such index remains unavailable. Conversion tables shall be used to compensate for any revisions in index numbers which may be revised.

4.05 ADJUSTMENTS TO FIXED COST COMPONENT. This Agreement, and the base price provided in paragraph 4.01 hereof, is based on a July 1, 1978 fixed cost component of \$5.88 per ton (the Base Fixed Cost Component). The Base Fixed Cost Component (BFCC) of the base price provided herein, and the billing price for all coal sold and delivered hereunder, shall be adjusted as of the first day of October and April of each year during the term of this Agreement, and any extended term hereof, to reflect changes in the Consumer Price Index and to establish a then Current Fixed Cost Component in accord with the following formula:

$$CFCC = BFCC \times \frac{CCPI}{BCPI}, \text{ where:}$$

CFCC is the Current Fixed Cost Component;

BFCC is the Base Fixed Cost Component;

CCPI is the Current Consumer Price Index, to-wit, the Consumer Price Index published by the U.S. Department of Labor, Bureau of Statistics, as of the previous June (in the case of the October 1 calculation) and as of the previous December (in the case of the April 1 calculation); and

BCPI is the Base Consumer Price Index of 186.1, the Consumer Price Index published as of December, 1977.

Seller shall calculate and furnish to Purchaser as soon as practicable after the first of October and April in each year of the term of this Agreement, and any extension hereof, the amount of the adjustment to the billing price for each ton by reason of the calculation of the then Current Fixed Price Component and such adjustment to the billing price shall apply to all coal delivered hereunder on and after the 1st of each such respective October and April.

In the event of the unavailability of the Consumer Price Index, the parties shall select by agreement the most nearly comparable measure of inflation published by the United States Government to measure changes in the fixed cost component. In the event the Consumer Price Index is revised, conversion tables shall be used to compensate for revisions in index numbers. The purpose of the adjustment provided in this paragraph is to assure that the fixed cost component of the billing price, in terms of purchasing power of dollars therein provided as of the effective date, remains constant and unaffected by either deflation or inflation in the economy of the United States. In the event the Consumer Price Index is unavailable, and the parties are unable to agree upon a suitable substitute index, the arbitration provisions of this Agreement, hereinafter provided, may be utilized to adjust the Fixed Cost Component of the Purchase Price to attain the object of this paragraph by selection of a suitable substitute index.

Line to line

4.06 (a) ADJUSTMENT FOR ROYALTY. A portion of the coal to be sold by Seller to Purchaser hereunder will be from Seller's Line Fork property, upon which property Seller is currently developing the mining facilities which will supply No. 4 seam coal to Purchaser under terms of this Agreement. Seller's Line Fork property consists of mineral acreage leased by Seller from Kentucky River Coal Company, under terms provided in a coal lease dated October 6, 1975, a copy of which coal lease has been delivered by Seller to Purchaser prior to execution of this Agreement. The Royalty component of the base price provided in paragraph 4.01 hereof is the actual average royalty expense of Seller incurred for all No. 4 seam coal being sold as of the effective date of this Agreement, including coal mined from the No. 4 seam from the Line Fork property and from other properties of Seller. It is the intention of the parties that the Royalty Component of the base price shall equal the actual royalty obligation of Seller for coal mined and sold to Purchaser under terms of this Agreement. In the event and whenever there is a change, either a decrease or an increase, in the royalty obligation of Seller attributable to the coal mined and sold hereunder to Purchaser, the billing price shall be adjusted to reflect, as a component thereof, the actual royalty obligation of Seller with respect to coal mined and sold hereunder. Upon such change, Seller shall notify Purchaser of the change in royalty obligation and such adjustment to the billing price to reflect the change in Royalty Component shall be effective for all coal sold and delivered hereunder from and after date of such change in Seller's royalty obligation.

Can
the
a

fine + fine

4.06(b) ADJUSTMENT FOR SEVERANCE TAXES. The Severance Tax Component of the base price provided in paragraph 4.01 hereof has been computed in accord with the following formula:

$$\frac{\$36.36 \times 100\%}{95.4\%} \times 4.3\% = \$1.64$$

This calculation represents Seller's anticipated severance tax obligations for coal sold hereunder as of July 1, 1978, the effective date of amendments to the Kentucky severance tax laws, recognizing that neither regulations nor interpretative bulletins have been published with respect to such amendments. In the event the calculation proves incorrect, or in the event and whenever, subsequent to July 1, 1978, there is a change, either a decrease or increase, in the severance tax obligation of Seller to the Commonwealth of Kentucky, or to any other governmental entity, the billing price shall be adjusted to reflect, as a component thereof, the actual severance tax obligation of Seller with respect to coal sold hereunder. Upon such change, Seller shall notify Purchaser of the change in severance tax obligation and such adjustment to the billing price to reflect the change in severance taxes shall be effective for all coal sold and delivered hereunder from and after date of such change in Seller's severance tax obligation. *Set 8 April*

4.07 ADJUSTMENT FOR BASE RAILROAD EQUIPMENT. The Railroad Equipment Component of the Base Price provided in paragraph 4.01 hereof (\$.92 per ton) covers the estimated cost to Seller in owning and maintaining railroad cars and power required to transport coal sold hereunder from Seller's mines through Calla to the

Wilder dumping facility for transloading into barges. The Railroad Equipment Component of the base price (the Base Railroad Equipment Component or BREC) and the billing price for all coal sold and delivered hereunder, shall be adjusted on the first day of each October and April during each year of the term of this Agreement, and any extended term hereof, to reflect a then Current Railroad Equipment Component (CREC) in accord with the following formula:

$$\text{CREC} = \text{BREC} \times \frac{\text{CWPI}}{\text{BWPI}}, \text{ where}$$

CREC is the Current Railroad Equipment Component;

BREC is the Base Railroad Equipment Component (\$.92);

CWPI is the Current Wholesale Price Index - Railroad Equipment published by the Department of Labor, Bureau of Statistics, as of the previous June (in the case of October 1 calculations) and as of the previous December (in the case of April 1 calculations); and

BWPI is the Base Wholesale Price Index - Railroad Equipment published as of December, 1977 (239.7).

Seller shall calculate and furnish to purchaser as soon as practicable after the first of October and April in each year of the term of this Agreement, and any extended term hereunder, the amount of the adjustment to the billing price for each ton by reason of the calculation of the then Current Railroad Equipment Component and such adjustment to the billing price shall apply to all coal delivered on or after the first of each such October or April.

In the event of unavailability of the Wholesale Price Index, the parties shall select by agreement the most nearly comparable measure of changes in wholesale prices with which to

measure changes in the Railroad Equipment Component. In the event of revision in the Wholesale Price Index, conversion tables shall be used to compensate for such revisions in index numbers. In the event the parties cannot agree upon a substitute measure upon availability of the Wholesale Price Index, arbitration provisions of this agreement may be utilized to provide a comparable adjustment to the Railroad Equipment Component of the price.

4.08 ADJUSTMENT OF OTHER TRANSPORTATION COST COMPONENTS.

As used in this paragraph, other transportation cost components of the base price provided in paragraph 4.01 hereof include:

Base Milling-in-Transit Component	\$.50 per ton
Base Freight Rate Component	2.84 per ton
Base Dumping Rate Component	.90 per ton
Base Barge Rate Component	.60 per ton

This Agreement, and the base price provided in paragraph 4.01, is based on the foregoing other transportation cost components. The Base Milling-in-Transit Component shall be adjusted to reflect actual changes in the milling-in-transit rate between Seller's mines and Calla, effective as of the date of such changes. The Base Freight Rate Component shall be adjusted to reflect actual changes in the freight rate, effective as of the date of such changes. The Base Dumping Rate Component shall be adjusted to reflect actual changes in the dumping rate at the Wilder terminal, effective as of the date of such changes. The Base Barge Rate Component shall be adjusted to reflect actual changes in the barge rate from Wilder to Ghent, effective as of the date of such changes.

Whenever a change occurs in a transportation rate covered in this paragraph, Seller shall give Purchaser prompt notice of the change and of the effective date of such change and the per ton billing price for coal sold and delivered hereunder shall be adjusted to reflect such changes as of the effective date thereof.

Notwithstanding other provisions of this paragraph, the parties recognize that, in order that dumping facility capacity be reserved and made available for the dumping of the annual contract tonnage of 1,000,000 tons hereunder beginning in 1982, it will be necessary that, during the interim period July 1, 1978, through October 31, 1980, certain payments be made to the owner of the dumping facilities. Any agreement for such payments shall be subject to the prior written approval of Purchaser, which approval shall not be unreasonably withheld. It is contemplated that such payments will include a somewhat greater per-ton charge for tonnage dumped (greater by reason of the reduced tonnage anticipated) and an assured minimum charge per tons not dumped below a specified minimum. Seller will pay and charge to Purchaser on a pass-through basis, the charge for tonnage dumped as a part of transportation to Purchaser hereunder. Seller will pay the assured minimum charges; and the amount of such charges will then be amortized and added to the price of coal payable hereunder during the ten-year term 1981 through 1990 in the same general manner as the amortization of the gross price differential, as described in paragraph 5.01, except that, in the amortization of the dumping charge the interest rate will be one (1%) per cent over the prime rate of Citibank, New York, New York. When the precise amounts of the

payments to be made to the owner of the dumping facilities are fixed by agreement with such owner, they will be specified in an addendum hereto.

line to line

4.09 ADJUSTMENT FOR GOVERNMENTAL IMPOSITIONS. The term "governmental imposition" as used in this paragraph means taxes or fees imposed by any government or governmental agency upon, or costs arising from any governmental law or regulation, or interpretation thereof, affecting the production, preparation or sale of coal hereunder, including ad valorem taxes on land, minerals, machinery and equipment, but excluding impositions such as federal or state income taxes which are not levied upon the production, preparation and sale of coal hereunder. The term governmental imposition as used in this paragraph excludes like costs and expenses covered under paragraphs 4.03 through 4.08, inclusive. No cost component appears in the base price provided in paragraph 4.01 for governmental impositions imposed after the effective date of this Agreement (July 1, 1978) covered by this paragraph. In the event, and whenever, after the effective date hereof, any federal, state or local law, ordinance, regulation or interpretation thereof, or amendment thereto, removes, increases or decreases any governmental imposition as defined herein, or imposes a new burden, Seller shall calculate the cost per ton to Seller occurring by virtue of such governmental imposition and the base price shall be adjusted to reflect the decrease or increase in cost per ton to Seller caused by such imposition and the billing price for coal sold and delivered hereunder shall be adjusted to reflect such change as of the effective date of such imposition. Seller shall

notify Purchaser as promptly as practicable of such change and the reason therefor and shall furnish to Purchaser the calculations upon which the per ton adjustment has been determined.

4.10 SUBSTANTIATION OF PRICE ADJUSTMENTS. Whenever a price adjustment is made under the provisions of paragraphs 4.03 through 4.09, inclusive, Purchaser shall accept or protest such adjustment within sixty (60) days from and after receipt of notice of such adjustment from Seller. If Purchaser protests such adjustment, Purchaser shall pay to Seller that amount of the claimed adjustment representing the undisputed portion thereof and fifty per cent (50%) of the disputed portion thereof until the propriety of such adjustment is finally determined, at which time the payments shall be adjusted by refund or payment (as the case may be) to reflect the adjustment as finally determined.

In the event of such protest, Purchaser or Purchaser's representative shall have the right during the next ninety (90) days to review Seller's books and records and determine whether such adjustment has been properly computed by Seller in accordance with the applicable provisions of this Agreement. If Purchaser, after such review, continues to protest such adjustment, Purchaser shall have the right during the next ninety (90) days to obtain independent certified public accountants acceptable to both parties, to review Seller's books and records and determine whether such adjustment has been properly computed by Seller in accordance with the applicable provisions of this Agreement. In determining whether such costs have been properly computed, the propriety of

the manner in which the books and records of Seller are maintained shall be determined according to generally acceptable accounting practices and provisions of the Federal Internal Revenue Code as then existing. In determining adjustments for labor related costs under paragraph 4.03 of this Agreement, Seller's average costs per ton incurred in the production and processing of all No. 4 seam coal produced and processed by Seller, calculated in the manner the labor cost component of the base price (\$15.98 per ton) has been determined, shall be employed by the parties. The independent certified public accountants shall, within such 90-day period, either certify to the parties that the adjustment to the Base Price has been properly computed by Seller in accordance with the provisions of this Agreement, or shall certify what such adjustment should be. If the independent certified public accountants certify that the adjustment has been properly computed by Seller in accordance with the provisions of this Agreement, Purchaser shall pay the charges made by such accountants in connection with such review; otherwise Seller shall pay such charges. Such certification by the independent certified public accountants shall be binding upon the parties. Provided, however, where such certification is based upon an interpretation of a provision or provisions of this Agreement by such accountants which interpretation is disputed by one of the parties hereto, the parties shall not be bound by such interpretation or certification and the question concerning the proper interpretation thereof shall (1) if a question of fact, be submitted to arbitration pursuant to paragraph 12.4 hereof if requested by one of the parties; or (2) if a legal issue, be subject

to interpretation as otherwise provided by law. As a part of the final adjustment of accounts pursuant to the final determination of a claimed adjustment, the party owing the other party as a result thereof, shall add to the amount owed interest at the rate of 1% above the prime rate at the Citibank of New York, New York, as said prime rate changed from day to day during the interest period. The term during which such interest shall be added shall be the period of time after Purchaser completes review of Seller's books and records in accordance with this paragraph 4.10 until the final adjustment of accounts in accordance with this paragraph 4.10.

5.01 DISPOSAL OF EXCESS INTERIM COAL, AMORTIZATION *need copy*
OF GROSS PRICE DIFFERENTIAL. The coal which is to be sold and delivered under the terms of this Agreement is desired by Purchaser primarily for the supply, in whole or in part, of the coal requirements of Purchaser for its Ghent #3 electric generating unit which is now under construction and scheduled for commercial operation in 1981. Except for possible stocking in the latter months of 1980, coal sold and delivered hereunder in the period prior to November 1, 1980 (hereinafter referred to as the interim coal or the interim tonnage), is not presently required by Purchaser except to the extent of shortfalls in the supply of coal delivered under contracts with others primarily for Purchaser's Ghent #2 generating unit, where coal of similar quality is burned. On the other hand, Seller has commenced development of the Line Fork property (from which small monthly tonnages can now be mined) from which a portion of the coal to be supplied hereunder will be mined and, in order to

attain production enabling deliveries at an annual rate of one million tons to commence hereunder by January 1, 1982, must proceed to build up its production capabilities in the interim period (i.e., from July 1, 1978, to October 31, 1980), and must sell and dispose of its production of coal during such period to provide cash flow and financing necessary to attaining production from such property in annual quantities required hereunder commencing in 1982. For these reasons the parties have, under provisions of paragraph 3.02 hereof, negotiated for and contracted for the purchase and sale under this Agreement of certain quantities of coal during the interim period, without which agreements for interim coal purchases Seller would not have entered into this Agreement.

For purposes of this paragraph, the following terms shall be deemed to have the following meaning:

a) Interim tonnage shall mean those quantities of coal which Seller has agreed to sell and deliver to Purchaser and Purchaser has agreed to buy from Seller, during the period commencing July 1, 1978, and ending October 31, 1980. The average monthly tonnage for the months of the interim period is as set forth in paragraph 3.02 hereof.

b) Price differential per ton shall mean the difference between the billing price per ton which would, but for the provisions of this paragraph, have been applicable from time to time for interim coal sold by Seller to Purchaser (i.e., the base price herein provided plus or minus adjustments thereto as provided in this

July 20, 1978
Purchaser

Agreement), excluding severance tax and transportation components attributable to transportation of such coal from Calla to Ghent, less the selling price per ton of interim tonnage sold, pursuant to this paragraph, by Seller for the account of Purchaser, excluding any severance tax and transportation components which may be included in such selling price attributable to transportation of such coal from Calla to point of destination.

c) Average price differential shall be computed by calculating the aggregate of all price differentials per ton experienced in the sale of interim tonnage by Seller for the account of Purchaser, divided by the number of tons of interim tonnage sold by Seller for the account of Purchaser during the interim period (July 1, 1978, through October 31, 1980).

If Purchaser, during the interim period (July 1, 1978, through October 31, 1980), should determine that it will be unable during any month to utilize the average monthly tonnage to be delivered in the interim period for its Ghent #2 or Ghent #3 units, Purchaser shall have the right to notify Seller, at least ten (10) days prior to the first day of such month, of the interim tonnage for such month that it cannot utilize and to instruct Seller to sell, at a price, f.o.b. Calla, not less than a minimum sale price set forth in Purchaser's notice (which shall exclude severance taxes), such quantity of coal for the account of Purchaser on the open market. Upon receipt of such notice, and subject to provisions hereinafter contained relating to distress coal,

Seller shall restrict its shipments of coal hereunder to Purchaser during such month to the difference between the average monthly tonnage to be sold under this Agreement and the quantity of coal to be sold for the account of Purchaser pursuant to such notice, and shall proceed to sell such coal on the open market and at the best price available under then existing market conditions, provided the best price available is not less than the minimum sale price specified in Purchaser's notice. If such coal is sold pursuant to Purchaser's instructions at a price, excluding severance tax and transportation components, which is more than Ten (\$10.00) Dollars per ton less than the billing price for such coal (under paragraphs 4.01-4.10), excluding severance tax and transportation components, Purchaser shall pay to Seller upon billing therefor an amount per ton equal to the difference, plus severance tax thereon, between the billing price, excluding severance tax and transportation components, less Ten (\$10.00) Dollars, and the actual selling price, excluding severance tax and transportation components.

Seller shall separately bill Purchaser for coal sold hereunder to third parties for the account of Purchaser at the billing price then in effect hereunder, exclusive of severance tax and transportation components attributable to transportation of coal from Calla to Ghent, and shall credit Purchaser with the proceeds of sale of coal so sold for the account of Purchaser, exclusive of severance tax and any transportation components of the proceeds of sale attributable to transportation of such coal from Calla to the point of destination. Each such billing for coal sold for the account of Purchaser shall include a calculation of the per ton price differential experienced during the billing period (which billing periods shall be concurrent with billing periods provided in paragraph 7.01

hereof). If such sales of coal for the account of Purchaser during such billing period result in a balance due Seller from Purchaser for such period, such amount shall be carried as a separate account receivable due Seller from Purchaser to be paid in accord with the further terms of this paragraph. If the proceeds of sale credited to Purchaser exceed the billing price for such coal, the amount of such credit shall be credited to and used to reduce the said account receivable due Seller from Purchaser. Interest shall be computed on the monthly balance of such receivable at the rate of eight (8%) per cent per annum, said monthly interest, not compounded and adjusted as hereafter provided, to be paid (unless the net average price differential per ton is a negative amount), following the end of the interim period, as hereinafter provided.

At the end of the interim period, October 31, 1980, Seller shall compute the net average price differential per ton for all coal sold for the account of Purchaser to third parties (including distress coal not utilized in the Ghent units as provided in 5.02 hereof during the interim period. If the net average per ton differential for such coal is Three (\$3.00) Dollars or less, then and in that event, Purchaser shall pay to Seller, in the manner hereinafter provided, a sum equal to the net average per ton price differential multiplied by the total number of tons of coal sold by Seller for the account of Purchaser during the interim period. If the net average price differential per ton for all coal sold for the account of Purchaser during the interim period is more than Three (\$3.00) Dollars and not more than Six (\$6.00) Dollars, then and in that event Purchaser shall pay to Seller, in the manner hereinafter provided, a sum

equal to Three (\$3.00) Dollars multiplied by the total number of
tons of coal sold by Seller for the account of Purchaser during the
interim period. If the net average price differential per ton for
all coal sold for the account of Purchaser during the interim
period is more than Six (\$6.00) Dollars and not more than Ten
(\$10.00) Dollars, then and in that event Purchaser shall pay to
Seller, in the manner hereinafter provided, a sum equal to one-half
(1/2) of the net average per ton price differential multiplied by
the total number of tons of coal sold by Seller for the account of
Purchaser during the interim period.

When the amount payable by Purchaser to Seller has
been determined pursuant to provisions of the immediately preceding
paragraph, such amount shall become the principal amount of the
account receivable of Seller from Purchaser by reason of interim
sales to third parties for the account of Purchaser and distress
sales to Purchaser. The amount of interest computed pursuant to
provisions in the final sentence of the second next preceding
paragraph shall be multiplied by a fraction, the numerator of which
is the said new principal amount determined pursuant to the immedi-
ately preceding paragraph, and the denominator of which is the
final principal balance of the account receivable computed pursuant
to provisions of the second next preceding paragraph. The said new
principal amount and adjusted interest amount shall then be added
and become a final principal amount, payable by Purchaser to Seller,
to be amortized, with interest thereon at the rate of eight (8%)
per cent per annum on the unpaid principal balance commencing

November 1, 1980, and added to the billing price of coal to be sold and delivered hereunder during the period beginning January 1, 1981, and ending December 31, 1990, as a separate component of the billing price for such coal and without escalation. In initially calculating the per ton component to be added to the billing price for such coal to amortize such obligation, the parties shall assume that the annual deliveries of coal will be made ratably per month and paid for on dates provided in paragraph 7.01. In any year in which actual deliveries are over or under the contemplated 1,000,000 tons, an adjustment shall be made in the following January to the billing price for coal delivered during such year so as to provide for payment by Purchaser to Seller of an amount equal to the amount which would have been paid on such obligation as if 1,000,000 tons had in fact been delivered during such year. Provided, however, that in the event this Agreement is terminated prior to December 31, 1990, the then remaining balance of principal and interest of the obligation provided hereunder shall become due and payable on the thirtieth (30th) day following such termination.

In the event the net average price differential per ton is a negative amount, Seller shall remit to Purchaser, within ninety (90) days after October 31, 1980:

a) If the negative net average price differential is less than Three (\$3.00) Dollars, an amount equal to the negative net average per ton price differential multiplied by the total number of tons of coal sold by Seller for the account of Purchaser during the interim period, or

b) If the negative net average price differential is more than Three (\$3.00) Dollars and less than Six (\$6.00) Dollars, an amount equal to Three (\$3.00) Dollars, multiplied by the total number of tons of coal sold by Seller for the account of Purchaser during the interim period, or

c) If the negative net average price differential is more than Six (\$6.00) Dollars, an amount equal to one-half (1/2) of the negative net average price differential multiplied by the total number of tons of coal sold by Seller for the account of Purchaser during the interim period.

5.02 DISTRESS COAL. In the event Seller is, in any month for which Purchaser has provided a notice to Seller to sell coal for the account of Purchaser, unable to sell all or any portion of such coal to be sold for such month within forty-five (45) days from date of receipt of Purchaser's notice at a price not less than the minimum price provided in said notice, efforts to sell such coal shall immediately cease, Seller shall notify Purchaser of its inability to market such coal at or above the minimum price and Seller shall ship such coal to Purchaser as distress coal to such location as Purchaser may designate therefor. Purchaser agrees to buy such distress coal, and Seller agrees to sell the same to Purchaser, at a price (hereafter called the "distress price") exclusive of severance tax and transportation, which is the greater of (a) the minimum price specified in Purchaser's notice to Seller

to sell the coal or (b) the billing price per ton therefor under the provisions of paragraphs 4.01-4.10 hereof exclusive of severance tax and transportation and less Ten (\$10.00) Dollars, to which distress price so determined there shall then be added severance tax and actual transportation costs to destination designated by Purchaser, which shall be billed and paid in accord with the provisions of paragraph 7.01 hereof. The sale of distress coal hereunder to Purchaser shall be treated by the parties as if such coal had been sold by Seller for the account of Purchaser to third parties under the provisions of paragraph 5.01 hereof relating to the manner of separate billing for such sales, the calculation and payment of average and net average price differentials, the computation of the amount due Seller from Purchaser or due Purchaser from Seller and interest thereon, and amortization of the amount due Seller from Purchaser under terms of paragraph 5.01, all as if such distress coal had been sold to third parties by Seller for the account of Purchaser at the distress price.

It is intended by the parties that Purchaser will pay, and Seller will receive, the billing price for all coal sold and delivered hereunder to Purchaser's Ghent units and utilized by Purchaser in either its Ghent #2 or Ghent #3 units. In the event Purchaser should direct the shipment of distress coal to its Ghent facilities, Seller will bill Purchaser for, and Purchaser will pay Seller, in accord with the provisions of paragraph 7.01 hereof, the distress price, severance taxes and transportation components of the billing price as provided in the foregoing paragraph. In addition

thereto, Purchaser shall pay to Seller the difference between the billing price at time of shipment (as determined under the provisions of paragraphs 4.01-4.10) and the distress price, severance taxes and transportation components of the billing price, at such time as such distress coal is deemed to be utilized as shortfall coal by Purchaser. Such distress coal shall be deemed to have been utilized, on a first in, first burned basis, as shortfall coal whenever and to the extent that the cumulative monthly coal burn at the Ghent #2 and #3 units, during the period July 1, 1978, through October 31, 1980, exceeds the cumulative monthly coal receipts of Purchaser at its Ghent #2 and #3 units from a) contract coal purchased from third parties and b) coal purchased hereunder from Seller at the billing price provided in paragraphs 4.01-4.10 hereof. In the event Purchaser has shortfalls in its third party contracts for Ghent #2 which Seller is unable to fill during the interim period, such shortfalls as Seller is unable to fill shall be eliminated from the aforesaid calculation of presumed shortfalls.

6.01 COAL SPECIFICATIONS. The coal to be sold and delivered by Seller and purchased by Purchaser hereunder shall be a fully washed product, shall be two inches (2.0") and under in size, shall not contain greater than fifty (50%) per cent of particles that are less than one quarter inch (1/4") in size, shall be prepared so as to be free from excess quantities of bone, slate, shale, fire clay, rock, loose clay and other impurities; and shall conform to the following analysis on an "as received basis":

*This meets
Federal
Definition
of
Compl coal.*

Moisture (total)
Ash
Sulfur

5% or less
8% or less
.6 pounds of sulfur per
million Btu or less
35.00 or more
2700° F. or more
46 or more (Hardgrove scale)
13,200 Btu/lb.

Volatile
Ash Fusion
Grindability
Calorific Value

present coal spec?

*yes OK
I # 4 Conf
meets this
spec*

6.02 ADJUSTMENT FOR CALORIFIC VALUE. The base price for coal sold and delivered hereunder is based upon delivery to Purchaser of coal having an average calorific value of 13,200 Btu per pound, as received by Purchaser at its Ghent facility. Whenever the weighted average calorific value of all coal delivered hereunder during any calendar month, as determined under the provisions of paragraphs 8.01 and 9.01 of this Agreement, is in excess of 13,400 Btu per pound, or is below 13,000 Btu per pound, the billing price shall be subject to an adjustment in each such month to compensate for variations in the calorific value of such coal. Such adjustment shall be made as follows: The billing price then in effect shall be multiplied by the weighted average calorific value for the month, and the product thereof shall be divided by the base calorific value of 13,200 Btu. The quotient of such division shall be the adjusted billing price per ton for coal delivered during that month.

7.01 BILLING AND PAYMENT. Seller shall bill Purchaser for all coal sold and delivered hereunder, at the then effective billing price (the base price herein provided in paragraph 4.01 hereof as decreased or increased pursuant to price adjustment provisions contained in paragraphs 4.03 through 4.09, inclusive, of this Agreement) twice each month, once for coal delivered between the 1st and 15th day of each month, inclusive, and once for coal delivered between the 16th and last day of each month. Each such billing shall be delivered to Purchaser within ten (10) days from

and after close of the billing period and Purchaser shall pay
Seller pursuant to such billings on or before the 5th day (for
billings for the period of days 1-15 of the prior month) and on or
before the 20th day (for billings for the period of days 16-end of
the prior month) of each month.

8.01 WEIGHING. The weight of coal sold and delivered hereunder shall be determined from Seller's scales or other scales approved by Purchaser. Such scales shall be maintained and operated so as to satisfy Southern Weighing and Inspection Bureau's requirements for a weight agreement for coal shipped hereunder. Southern Weighing and Inspection Bureau's requirements for weight agreements are based on National Bureau of Standards Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Commercial Weights and Measuring Devices". In the absence of scale weights from Seller, Purchaser and Seller will mutually agree as to the method of determining the weight of the coal sold, delivered and purchased hereunder. Such methods as mutually agreed on shall not necessarily be the same as that required under the tariff for payment of freight.

A net weight will be determined and reported for each shipment of coal hereunder. If Seller provides railroad track scales, the actual empty weight of the rail car rather than the empty-(tare)-weight stenciled-on-the rail car shall be used for determination of net weight. The aggregate weights determined during any payment period shall be accepted as the quantity of coal

sold and purchased during such period for which invoices are to be rendered and payments to be made.

9.01 SAMPLING AND ANALYSES. Seller shall provide at the coal loading facility a mechanical sampling system of the "cutting the full coal stream" type. The design of the sampling system shall be in accordance with American Society for Testing and Materials Standard D-2234-72 "Collection of a Gross Sample of Coal" and Standard D-2013-72 "Preparing Coal Samples for Analysis." The sampling system shall be enclosed to minimize moisture loss and shall be designed for one stage of sample crushing. Seller shall submit design drawings and specifications of the sampling system to Purchaser for approval prior to installation.

Seller shall collect representative samples using the mechanical sampling system as described above at the loading facility of each shipment of coal sold hereunder. The final sample of 8 mesh coal from the mechanical sampling system shall be reduced to 1000 gram laboratory samples in accordance with American Society for Testing and Materials Standard D-2013-72 "Preparing Coal Samples for Analysis," using enclosed riffles to minimize moisture loss. One laboratory sample shall be sent to Purchaser's designated laboratory, one laboratory sample retained by Seller for six (6) months from date of shipment as a reserve sample, and an additional laboratory sample analyzed by Seller to meet its requirements.

Purchaser or its designated representative may observe any sampling or sample preparation performed by Seller and Seller or its designated representative may observe any sampling or

sample preparation performed by Purchaser or Purchaser's designated laboratory.

If a dispute arises between Purchaser and Seller over the result of such analyses, a further analysis shall be made by an independent, qualified, commercial testing laboratory agreed upon by the parties, and the results of such further analysis shall be binding upon the parties. The cost of any such independent analysis shall be borne equally by Seller and Purchaser.

Purchaser's designated laboratory may be an independent, qualified, commercial, coal testing laboratory who shall analyze the laboratory samples sent by Seller in accordance with practices generally accepted in the industry. In the event Purchaser elects to employ such a commercial laboratory, Seller shall not be liable for any costs incurred by Purchaser except as herein provided. With respect to coal delivered hereunder prior to January 1, 1981, however, Seller shall be permitted to employ its current practice of car top sampling in obtaining samples for analysis.

9.02 SHIPPING NOTICES. Within twenty-four (24) hours after loading each shipment, Seller shall telex to Purchaser a notice of shipment which shall include such pertinent information about such shipment, including information relating to the weight and results of sampling and analysis of the coal shipped, as may be required by Purchaser from time to time.

10.01 CANCELLATION OF AGREEMENT FOR COAL QUALITY
FAILURES. Should the quality of coal received for any unit train show, by analysis, failure to comply with the stipulations and

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specifications stated in paragraph 6.01 of this Agreement, Purchaser shall have the right to reject such coal and/or serve notice that shipments shall be suspended immediately. After notice of any such failure, this Agreement may be cancelled by Purchaser in ninety (90) days unless Seller gives reasonable assurance within fifteen (15) days after receipt of said notice that it will and can comply with the stipulations and specifications stated in Section 6.01 of this Agreement.

In light of Purchaser's need to comply with environmental regulations stated in terms of hourly and other short duration emission rates, if the quality of coal received hereunder fails to so consistently comply with the coal specifications stated in paragraph 6.01 as to enable Purchaser to burn the coal in compliance with such regulations, Purchaser shall have the same rights to reject coal, suspend shipments and, absent the furnishing of assurance as above set forth, to cancel this Agreement. *Handwritten: due*

10.02 ADDITIONAL RIGHT OF CANCELLATION OF AGREEMENT FOR COAL QUALITY DEFICIENCIES. In addition to and not a limitation upon the right of Purchaser under paragraph 10.01, if during a ninety (90) day period ten per cent (10%) of the coal tonnage shipped by Seller fails to comply with Section 6.01, Purchaser shall have the right to terminate this Agreement. *Handwritten: de*

10.03 CANCELLATION FOR UNREMEDIED DEFAULT. In the event of the failure of either party to comply with any or all of their respective obligations in good faith, herein set forth, the party not then in default shall have the right to terminate this Agreement at any time by giving to the other ninety (90) days notice in

writing of its intention so to do, specifying the default complained of and, at the expiration of said ninety (90) days, unless the party in default shall have made good such default, the party not in default shall have the right at its election to cancel this Agreement forthwith. This right shall be in addition to the rights provided to either party in other portions of this Agreement and by law.

11.01 FORCE MAJEURE. "Force Majeure" as used herein shall mean a cause reasonably beyond the control of the Seller or Purchaser, as the case may be, which wholly or in substantial part prevents the completion of construction of the processing or loading facilities, the mining, loading or delivery of coal at or from the Coal Property, or the unloading, storing or burning of coal by Purchaser at its destination. Examples (without limitations) of force majeure, but only if reasonably beyond the control of the Seller or Purchaser, as the case may be, are the following: acts of God; acts of the public enemy; insurrections; riots; strikes; labor disputes; work stoppages; fires; explosions; floods; equipment breakdown or outage (including scheduled outages for maintenance); electric power failures; interruptions to or contingencies of transportation; embargoes; and orders or acts of civil (including, without limitation, a city or county ordinance, an act of a state legislature and an act of the United States Congress) or military authority. In the event force majeure prevents the unloading, storing or burning of coal by Purchaser at the destination or destinations to which the coal is then being shipped, Purchaser

shall consider what steps can be taken in the transportation and utilization of the coal, including diversion of the coal to other of its plants so as to allow the coal to be used by Purchaser, and if such steps can be accomplished without unreasonable cost or expense, in Purchaser's sole opinion, Purchaser shall promptly take such steps.

Purchaser and Seller recognize that environmental restrictions (including air quality considerations) may substantially hinder the purchasing or burning of coal hereunder by Purchaser at one or more of its plants. If any such restriction substantially hinders or makes economically infeasible the burning of the coal by the plant or plants of Purchaser then receiving coal hereunder, Purchaser shall consider what steps can be taken in the handling, transportation and utilization of the coal, including diversion of the coal to other of its plants so as to allow the coal to be used by Purchaser and if such steps can be accomplished without unreasonable cost or expense, in Purchaser's sole opinion, Purchaser shall take such steps, and this Agreement shall continue in full force and effect. If such steps will not permit, and make economically feasible, the burning of such coal, Seller, at its option, shall have the right to take any steps available to it in the mining and processing of the coal that will permit the coal to be burned by Purchaser free of such restrictions and hindrance or to supply Purchaser with a suitable substitute fuel that can be so burned without change to Purchaser's facilities; but in either such event the price of such fuel shall be adjusted by mutual agreement

to compensate Seller for additional expense incurred in supplying such fuel, but nothing contained in this sentence shall be deemed to require the increase of the price of such fuel beyond the cost of other suitable fuel reasonably available to Purchaser. In the event that such restrictions are not avoided by either Purchaser or Seller as hereinabove provided, then the imposition of such restrictions shall constitute an event of force majeure which shall operate to suspend all of Purchaser's or Seller's obligations under this Agreement.

If because of force majeure either Purchaser or Seller is unable to carry out its obligations under this Agreement, and if such party promptly gives the other party hereto written notice of such force majeure, the obligations and liabilities of the party giving such notice and the corresponding obligations of the other party shall be suspended to the extent made necessary by and during the continuance of such force majeure; provided, however, that the disabling effects of such force majeure shall be eliminated as soon as and to the extent possible (except that either party may settle any of its own labor disputes, strikes or terminate any of its own lockouts in its sole discretion).

If (a) a condition of force majeure occurs, (b) mutual obligations are suspended as contemplated by the paragraph next hereinabove, (c) such condition (alone or extended by other conditions of force majeure) continues so that the mutual obligations remain suspended for a period of six (6) months, and (d) at the end of said six (6) months or at any time thereafter the party

other than the party suffering such condition, in the exercise of reasonable judgment, concludes that there is no likelihood of ending the condition(s) or the suspension in the immediate future, then such party may terminate this Agreement without liability to the other party by giving to the other party ninety (90) days notice in writing of its intention to terminate, unless the suspension is removed within such period.

It is agreed that in the event that any valid act, law, ordinance, rule or regulation of a municipality, county, state or the United States government is adopted, passed or changed after the date of this Agreement, which (a) directly prohibits the mining contemplated hereunder or (b) effectively imposes upon Purchaser burdens, restrictions or added costs or penalties of a substantial nature upon the burning or use of such coal by Purchaser to the extent that Purchaser is unable to economically utilize such coal in its electric generating plants, then the existence and implementation of such act, law, ordinance, rule or regulation shall constitute an instance of permanent force majeure whereupon this Agreement may be terminated by the party so affected.

In the event Seller is prevented, in whole or in part, from producing, processing or shipping coal hereunder due to force majeure circumstances described above, deficiencies in shipment so resulting may be added to subsequent shipments if Seller is requested to do so by Purchaser but only to the extent that Seller determines that it is able to produce, process and ship additional coal in accordance with its normal operating and shipping

schedule. To the extent that Seller determines that it can produce, process, and ship additional coal only on the basis of premium time or overtime operations, Seller shall use its best efforts to do so but only upon the written request of Purchaser, in which event additional costs incurred by Seller shall be for the account of Purchaser.

12.01 REVIEWS. (1) Escalation. One (1) year prior to the end of the third year of operation under this Agreement, and one (1) year prior to the end of each third year of operation thereafter, the parties agree that they shall consider whether the specified components (for example, supplies) in the Base Price Adjustment provisions of this Agreement (paragraphs 4.03 through 4.09) are required to be adjusted, on an equitable basis, because of the occurrence, after the effective date of this Agreement, of material unforeseen events or changed conditions. No revision to such components shall be made unless it is found that, because of such events or conditions, the existing component provisions do not accurately reflect the decrease or increase in costs or in the effects of deflation or inflation in the economy. In determining whether revisions are appropriate, consideration may be given to such items as costs of producing coal, replacement cost of plant, machinery and equipment (which is anticipated to require replacement during the term of this Agreement) and then current levels of coal royalties paid by Seller, and the then current market price of like quality coal produced in the general area of Seller's properties. The parties shall use their best good faith efforts to

arrive at mutually agreeable revisions to such components, if any, in the Base Price Adjustment provisions. Any revisions to such Base Price Adjustment provisions shall be effective beginning with the first day of the next succeeding year of this Agreement and shall continue thereafter. If the parties are unable to agree with respect to revision of the Base Price djustment provisions on or before the applicable anniversary date of this Agreement then either party may submit the question of such revisions to arbitration under the provisions of paragraph 13.04 hereof.

(2) Base Price. One (1) year prior to the end of the third year of operation under this Agreement, and one (1) year prior to the end of every third year of operation thereafter, the parties agree that they shall consider whether the Base Price provision of this Agreement (paragraph 4.01) is required to be adjusted, on an equitable basis, because of the occurrence, after the effective date of this Agreement, of material unforeseen events or changed conditions. No revision to such Base Price shall be made unless it is found that, because of such events or conditions, the existing Base Price is inequitable to one of the parties. The parties shall use their good faith efforts to arrive at mutually agreeable revisions to such Base Price, if any. In determining whether an inequity exists, consideration may be given to such items as a drastic increase or decrease in the cost of mining equipment (which is anticipated to require replacement during the term of this Agreement) which substantially is not accounted for by the price adjustment provisions hereof, that is

paragraph 4.03 through paragraph 4.09 or the effect upon Seller of any change in the existing federal tax laws and regulations related to depletion allowance, or the then current market price of coal of like quality produced in the same general area of Seller's properties. Any revisions to the Base Price provision shall be effective beginning with the first day of the next succeeding year of this Agreement and shall continue thereafter. If the parties are unable to agree with respect to revisions of the Base Price provision on or before the applicable anniversary date of this Agreement, then either party may submit the question of the base price revision to arbitration under the provisions of paragraph 13.04 hereof.

(3) Change in Environmental Regulations. In the event that the present federal, state or other applicable laws or regulations with respect to power plants' sulfur dioxide emissions and/or emission control equipment, or the interpretation or administration of such laws or regulations, are hereafter changed (whether by legislative, judicial, executive or administrative action) in such manner as to effectively make possible the use of fuel with greater sulfur content, then the Base Price provisions hereof will, at the request of Purchaser, be reopened and Seller and Purchaser will review and consider in good faith the reasonableness and fairness of such provisions in light of all relevant factors, including capital invested by Seller to fulfill the requirements of this Agreement and the then cost of fuel reasonably available to Purchaser and having quality acceptable for use by Purchaser under the changed laws or regulations, and will further review and

consider means, if any, by which Seller's costs of producing coal may be decreased such as, but not limited to, reducing preparation of coal requirements, and will attempt to agree upon an acceptable revision of the Base Price provisions. In the event Seller and Purchaser are unable to agree upon an acceptable revision of the Base Price provisions within three (3) months after election by Purchaser to reopen such Base Price provisions, then this Agreement shall continue for a period of one (1) year after such three (3) month period at which time this Agreement shall, at the election of Purchaser, automatically terminate.

13.01 INDEPENDENT CONTRACTOR. This is an Agreement for the purchase and sale of coal in which the parties recognize and agree that Seller is not an agent or employee of Purchaser but is independent of any managerial or other control or direction by Purchaser in its work hereunder, and is free to perform, by such means and in such manner as Seller may choose, all work in pursuance of commitments hereunder.

13.02 BINDING EFFECT. This Agreement shall bind and inure to the benefit of the parties and their successors and assigns.

13.03 ASSIGNMENT. Neither party may assign this Agreement or any rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, that consent shall not be required for Seller to assign, pledge or hypothecate this contract }
purely for financing purposes.

13.04 ARBITRATION. In the event of any dispute, difference of opinion or controversy between the parties as to any question of fact, as opposed to any question of law, which may arise under this Agreement with respect to any of the following matters only: the quantity, quality, weights, sampling and analysis, adjustments pursuant to paragraphs 4.03 through 4.09, and price revisions under paragraph 11.1 hereof, and, in the event of any failure or inability of the parties to arrive at a mutual agreement with respect to matters provided above, either party shall have the right, but shall not be required as a condition precedent to court action, to request arbitration by giving written notice thereof to the other party, in which event each party agrees to appoint a competent, reasonable and disinterested person skilled in the subject matter of the issue in dispute as an arbitrator. Should either party fail to appoint an arbitrator within ten (10) days after giving or receiving such written notice, an arbitrator for such party shall be appointed by the person who is then acting as Senior Judge of the United States District Court for the Eastern District of Kentucky in the manner hereinafter provided. If, within a reasonable time, the two arbitrators are unable to agree as to the determination of the questions submitted to them, they, within ten (10) days after such inability to agree becomes apparent, shall appoint a third arbitrator and the decision of the majority shall be final and binding on the parties hereto as to such matters that are properly submitted and determined by the arbitrators. Should the two arbitrators be unable to agree within

such ten (10) day period upon a third arbitrator, then upon the election of either Seller or Purchaser, the person who is then acting as Senior Judge of the United States District Court for the Eastern District of Kentucky shall, upon the application of either party, have the power to appoint an arbitrator (or arbitrators in the event any appointee of such judge fails to serve), such arbitrator or arbitrators to be competent persons skilled in the subject matter of the issue in dispute to make such determination. Five (5) days' written notice of the application to such judge shall be given to the other party by the party making such application. The reasonable compensation of any arbitrators not designated by the respective parties and the cost of the arbitration shall be shared equally by the parties to this Agreement. In each instance the decision of a majority of the arbitrators shall be final and binding as to such matters as are properly submitted to and determined by them. During arbitration, and as a condition to such arbitration, the parties shall have full discovery rights as provided in the Federal Rules of Civil Procedure and as would be available to the parties if the matter were before a United States District Court.

13.05 NON-WAIVER. The failure of either party to insist on strict performance of any provision of this Agreement, or to take advantage of any right hereunder, shall not be construed as a waiver of such provision or right.

EXHIBIT A

SOUTH-EAST COAL SALES COMPANY
COAL PURCHASE AGREEMENT
KENTUCKY UTILITIES

INDEX OF MATERIAL AND SUPPLY COST

<u>PI CODE</u>	<u>COMMODITY</u>	<u>WEIGHT</u>	<u>INDEX NUMBER</u> <u>DECEMBER, 1977</u>	<u>WEIGHTED</u> <u>INDEX NUMBER</u>
192	Mining Machinery and Equipment	35.0%	235.9	82.565
144-0221	Belt Conveyor	5.0%	193.3	9.665
545-1617	Industrial Power - East South Central	6.5%	237.5	15.438
015-02	Finished Steel	10.5%	236.6	24.843
026	Wire and Cable	2.0%	151.0	3.020
173	Electrical (Motor, Generator, etc...)	2.0%	210.0	4.200
143	Fluid Power Equipment (Pump, Valve, etc..)	4.5%	157.3	7.079
081-0141	Roof Belt	8.0%	163.2	13.056
0812	Hardwood Lumber	3.5%	208.5	7.298
0576	Finished Lubricant	5.0%	197.5	9.875
32	Concrete Ingredient	3.0%	200.9	6.027
Industrial Commodities		<u>15.0%</u>	200.0	<u>30.000</u>
Weighted Average		(100%)		213.066